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Supreme Court, U.S.
FILED

081137 MAR 4 - 2009

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No.

IN THE
**Supreme Court of the United States**

ENTEC CORPORATION, ET AL.,
*Petitioners*
v.

CENTRO DE RECAUDACIÓN DE INGRESOS MUNICIPALES,
*Respondent*

*PETITION FOR A WRIT OF CERTIORARI*
*TO THE SUPREME COURT*
*OF THE COMMONWEALTH OF PUERTO RICO*

# APPENDIX OF PETITION
# VOLUME A

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**COMMONWEALTH OF PUERTO RICO**
**FIRST INSTANCE COURT**
**SAN JUAN PART**

CRIM
PLAINTIFF — CASE NO. K PE2001-2012
VS. — ROOM: 0603
ENTEC CORPORATION
DEFENDANT — SPECIAL PROCEDURES
GROUNDS/CRIME

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NOTICE OF RESOLUTION OF
DETERMINATION OF INITIAL FACTS
OR ADDITIONAL FACTS

THE SUBSCRIBING SECRETARY NOTIFIES THAT THIS COURT HAS PRONOUNCED JUDGMENT ON THE CASE IN THE HEADING OF THIS DOCUMENT DATED JUNE 26, 2007, THAT IT HAS BEEN DULY REGISTERED AND FILED IN THE COURT

PROCEEDINGS OF THIS CASE, WHERE YOU CAN BE INFORMED IN DETAIL OF THE TERMS OF THE SAME.

AND, BEING OR REPRESENTING THE INJURED PARTY BY THE RESOLUTION, OF WHICH AN APPEAL CAN BE ESTABLISHED, I ADDRESS THIS NOTICE TO YOU HAVING FILED IN THE COURT PROCEEDINGS OF THIS CASE COPY OF IT DATED JULY 24, 2007.

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GRISELDA RODRÍGUEZ
COLLADO, ACTING

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SECRETARY

/initials
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ASSISTANT SECRETARY

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**COMMONWEALTH OF PUERTO RICO**
**COURT OF GENERAL JUSTICE**
**FIRST INSTANCE COURT**
**SAN JUAN COURTROOM**

| | |
|---|---|
| CENTRO DE RECAUDACION DE INGRESOS MUNICIPALES<br><br>Plaintiff<br><br>v.<br><br>ENTEC CORPORATION, CONSULTA ECONOMICA Y PLANIFICACIÓN, INC.; BY ITSELF AND IN REPRESENTATION OF HÉCTOR LUIS RIVAS Y ASOCIADOS IN THE LIMS CONTRACT, HÉCTOR LUIS RIVAS & ASSOCIATES; TOMMY HABIBE ARIAS; TOMMY HABIBE VARGAS, HIS WIFE MRS. DE HABIBE VARGAS AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; HÉCTOR LUIS RIVAS COLON, HIS WIFE MRS. RIVAS | CIVIL CASE NO.<br><br>KPE2001-2012<br>(603)<br><br>RE:<br><br>DECLARATORY JUDGMENT,<br>PRELIMINARY INJUNCTION,<br>PERMANENT INJUNCTION,<br>NULLITY OF CONTRACT,<br>LAW AGAINST ORGANIZED CRIME AND DAMAGES |

COLON & THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; JOHN PAUL STEPHENS REXACH, HIS WIFE MRS STEPHENS REXACH AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; EDUARDO BURGOS NEGRÓN, HIS WIFE MRS. BURGOS NEGRÓN AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; CÁNDIDA RODRIGUEZ LARRENDOWTTE; WANDA RODRIGUEZ HERNÁNDEZ; BERNARDO NEGRÓN MONTALVO, HIS WIFE MRS. NEGRÓN MONTALVO AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; CARLOS SERRA VELEZ, HIS WIFE MRS. SERRA VELEZ AND THE LEGAL COMMUNITY OF

PROPERTIES COMPOSED BETWEEN THEM; MARGARITA SANFELIZ WU, HER HUSBAND BENJAMIN WU AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; HABIBE ENTERPRISES, INC.; ACTIVE CONSULTING, INC. ; HABIBE COMPUTER CORP. (today known as VENTURE TECHNOLOGIES CORP.; GEOTEL, INC. (formerly known as WOOLPERT PUERTO RICO, INC.; and its stockholders, among others.

Defendants

**RESOLUTION**

It has been submitted before our consideration a request for determination of facts and additional legal findings. It has also been requested the reconsideration of the Partial Summary Judgment

where we determined that the contract object of the current litigation is null *ab initio*. Also, it has been filed again before our consideration the controversy regarding the arbitrability of the validity of said contract.

In the referenced case, in synthesis, the nullity at the beginning of the contract is alleged, as subscribed between Centro de Recaudación de Ingresos Municipales (hereinafter the CRIM), and the Consortium composed of ENTEC, CEPI, and Héctor Luis Rivas & Associates. This contract stipulated that the Consortium would be in charge of the design, development, installation and implementation of a land registry system, known as "Land Information Management System" (LIMS). The CRIM presented the lawsuit of the case filed in court against the members of the Consortium and

their officers, alleging, among others, that the LIMS contract was null *ab initio* because of fraud.

After several judicial proceedings and having evaluated the judicial file, we proceed to solve the pending issues before the consideration of this Court.

## 1. REQUEST FOR DETERMINATIONS OF FACTS AND ADDITIONAL LEGAL CONCLUSIONS; RECONSIDERATION

This Court pronounced Partial Summary Judgment on December 7, 2005 and notification on December 13. The defendant, on December 23, 2005, ten (10) days after filing in the court records copy of notice of this Judgment, filed before this Court a "Request for Determination of Facts and Additional Legal Conclusions".

The plaintiff, CRIM, was notified of said Motion on December 27, 2005, four (4) days after filing it in Court. Therefore the CRIM alleges that the defendant has failed to comply with the

notification requirement by Rule 43.3 of Civil Procedures on failing to notify within the ten (10) days of strict compliance that the Rule disposes for notifying all parties.

**A. Applicable Rules of Civil Procedures**

The Rules of Civil Procedures of 1979, as amended, dispose the following regarding this issue:

**Rule 43.3 Initial or additional amendments or determinations.**

> "It will not be necessary to request that the determination of facts be consigned to the effects of an appeal, but for a motion on the part of, **presented at the latest ten (10) days after having filed in the court proceedings copy of the notice of the judgment,** the court will be able to make the determinations of facts and the corresponding legal initial conclusions, if this have not been done, because they were

unnecessary, according to Rule 43.2, or may amend, or make additional determinations, and can amend the judgment accordingly. The motion can be gathered with a reconsideration motion, or of a new trial according to Rules 47 and 48 respectively. In any event, the sufficiency of the evidence to support the determinations may be sustained afterwards even when the party that draws up the issue have not objected to them in an inferior court, or has not presented motion to amend them, or has not requested judgment.

The additional determination of facts motion will be notified to the other parties in the lawsuit within ten (10) days established by the rule to present the same before the court. **The term to notify will be of strict compliance**". 32 L.P.R.A. Ap. III R. 43.3.

**Rule 43.4. Interruption of term to request remedies**

**subsequent to the judgment.**

"A motion filed by any of the parties of the lawsuit in order for the court to amend its' determinations or make initial or additional determinations, the terms that establish rules 47, 48 and 53 will be interrupted for all the parties. These terms will start to run again as soon as a copy of the notification of the determinations and conclusions requested are filed in court." 32 L.P.R.A. Ap. III R. 43.4.

**Rule 68.2. Extension of time or decrease in the terms.**

When by these rules or by a notification given by virtue of its' dispositions, or by an order of the court it is requested or permitted the accomplishment of an act in or within a specified period, the court can, by a just cause, in any moment and in the exercise of its' discretion, (1) order without a prior motion, or notification or without them,

> that the period to be extended or shortened if it is so requested before the original term has lapsed or as time extended through previous order; or (2) by virtue of motion presented after the specified period of time has expired, allow that the act be held if the omission was due to an excusable negligence; **but it will not be able to extend the period of time or shorten the period to act under the dispositions of Rules 43.3**, 44.1, 47, 48.2, 48.4, 49.2 53.1, 53.2, 53.3 and 53.7, except for the disposed in the same under the conditions in them expired. 32 L.P.R.A. Ap. III R. 68.2.

**1. Discretion of the court to grant the Request**

The Supreme Court has warned that, from the clear words of the preceding quoted Rule 43.3, it gives way and it is obvious that the instance court is not obliged to make determinations of facts and of additional legal conclusions after being requested by

one or more parties; of considering that the same do not proceed. Blas v. Hosp. Guadalupe, 146 D.P.R. 267, 319 (1998). Certainly, the judge has the discretion to deny such motion, since, in essence, it only proceeds to correct expressed legal or facts errors. José A. Cuevas Segarra, Tratado de Derecho Procesal Civil, ("Treaty of Civil Procedural Laws") Tomo II, San Juan: Publicaciones JTS, 2000, page 695. Carattini and others v. Collazo Systems Analysis, Inc., and others, 2003 TSPR 1.

According to the preceding, in the quoted case of Blas v. Hosp. Guadalupe, afore, to page 319, the Supreme Court has expressed that using the word "may" in the text of the strictly so called regulatory disposition, bestows a discretional character for the judge to evaluate if it really proceeds to make the determinations that have been requested. The rule clearly advises that the court can amend the initial

determinations, and will be able to amend the judgment in conformity. Carattini and others v. Collazo Systems Analysis, Inc., and others, supra.

**2. Presentation and Notice of Request**

Rule 43.3 of Civil Procedures clearly disposes that a motion regarding determination of additional facts has to be filed before the Court no later than 10 (ten) days after having filed in the court records a copy of the notice of judgment. Canales v. Converse de P.R., Inc., 129 D.P.R. 786 (1992); Sucesión de Salvador Jiménez v. Pérez Cirino, 153 D.P.R. 527 (2001). This term is jurisdictional. See Rule 68.2 supra. Nevertheless, the term for notification of determination of additional facts of Rule 43.3 of Civil Procedures is the same term of ten (10) days allowed to present the motion in court and will be of strict

compliance. (Supplied emphasis.) Sucesión de Salvador Jiménez v. Pérez Cirino, supra.

It has been jurisprudentially established that the courts can exempt one party of the requirement to faithfully carry out a term of strict compliance if two conditions are met: (1) that in effect a just cause for the delay exists; (2) that the party demonstrates in detail to the court the reasonable basis it has for the delay; that is, that the interested party credits in an adequate manner the alluded just cause. Arriaga v. F.S.E., 145 D.P.R. 122, 132 (1998); Rojas v. Axtmayer Ent., Inc., 150 D.P.R. 560, 565 (2000); Lugo Rodríguez v. Suárez Camejo, 2005 TSPR 136.

In this case, from the judicial files ensues, that the Request for Determination of Facts and Additional Legal Conclusions was filed within the jurisdictional term of ten (10) days that Rule 43.3

disposes, as evidenced from the stamped date of filing in court that is printed on the motion.

Regarding the request to notify all the parties, which is of a strict non-jurisdictional compliance, the defendant accomplished the same. In the Hearing of September 28, 2006 the defendant demonstrated before this court justifiable reasons for the late notification of the motion to the other parties. See Minutes of Hearing of September 28, 2006.

Being this matter cleared, we will evaluate if the Request for Determination of Facts and Legal Conclusions presented by the defendants fulfills the contents request and if in effect interrupted the jurisdictional term for the reconsideration.

**3. Contents Request as Demanded by the Forensic Practice**

The reason of being of Rule 43.3 of Civil Procedures regarding determination of facts and

additional legal conclusions is to grant the sentencing court the opportunity to amend or correct any mistake done, that is, to make thorough justice. Andino v. Topeka, Inc., 142 D.P.R. 933 (1997).

The Supreme Court has consistently indicated that the timely filing of a motion protected by Rule 43.3 interrupts the terms to file the request to reconsider judgment (Rule 47), of new trial (Rule 48), as well as the prescriptive terms to appeal or request revision of the pronouncement issued by the instance court (Rule 53.1); Figueroa Hernández v. Rosario Cervoni, 147 D.P.R. 121 (1998); Soc. de Gananciales v. Sánchez, 148 D.P.R. 326 (1999); 158. Carattini y otros v. Collazo Systems Analysis, Inc., y otros, supra.

Regarding the practical applications of the quoted regulatory dispositions, in occasion of solving Andino v. Topeka, Inc., 142 D.P.R. 922 (1997); the

Supreme Court said, that by its' appearances, Rules 43.3 and 43.4 of Civil Procedures, do not visualize another interrupting requirement that is to file said motion within the ten (10 days following the filing in court of the notification of judgment. Nevertheless, it said, that interpretation is not in harmony with the governing processing principle that inspires the just, fast and economical solution to every lawsuit. Ibid, to page 937; Rule 1 of Civil Procedure, 32 L.P.R.A. Ap. III R.1. Upon taking care of said worry, it resolved that only a timely and well formulated request for determination of additional facts, is the one that interrupts the terms to present an appeal, among other resources Carattini and others v. Collazo Systems Analysis, Inc., and others, supra.

In order for a determination of additional facts to be able to interrupt the appealed term, it is not enough for its' title to state that such determination

of additional facts are requested, but that it should include a description even if brief, of what are the facts that according to the plaintiff have not been determined by the judging court, when in fact, they should. Andino v. Topeka, Inc., supra.

The Supreme Court has emphasized, also, that in order for a motion to proceed sheltered by Rule 43.3 before, this shall expose substantial issues related with determination of facts or material legal conclusions. The forensic practice demands that every motion regarding determination of additional facts or of amendment should constitute a proposal which exposes, with sufficient particularity, and specificity, the facts that the plaintiff estimate that are proven and based on substantial issues related to pertinent determination of facts or material legal conclusions. Andino v. Topeka, Inc., supra. Carattini and others v. Collazo Systems Analysis,

Inc., and others, supra. It would be contrary to ask the judger to act blindly or make him into a sorcerer. Andino v. Topeka, Inc., supra.

Therefore, to interpose a motion covered by Rule 43.3 of Civil Procedures to comply with the previously described requests in Andino v. Topeka, supra, interrupts the term to resort to a revision of judgment and according to Rule 43.4 of Civil Procedures previously quoted, will again begin to elapse as soon as it is filed in Court copy of the notice of determination and submitted conclusions. Rodríguez Díaz v. Zegarra, 150 D.P.R. 649 (2000); Carattini and others v. Collazo Systems Analysis, Inc., and others, supra.

In the records of the case, the "Request for Facts and Additional Legal Conclusions" filed by the defendant circumscribes to state the following:

a) That upon this Court issuing its Partial Summary Judgment of December 7, 2005 and notified on December 13, the discovery of evidence had not concluded since the deposition of the co-defendant Mr. Bernardo Negrón was pending, set for November 21, 2005 and that the contents of the deposition is adverse to the defendant and contrary to what this Court pronounced in the Summary judgment;

b) That Mr. Eduardo Burgos gave at least two (2) different versions to officers of government agencies before adopting the last version in order to receive the lowest possible punishment, as per his admission in the deposition;

c) That neither co-defendant Tommy Habibe Arias, nor Tommy Habibe Vargas pleaded guilty to any specific crime included in or near the date in which the LIMS Contract was granted, eg. July 20, 1995;

d) That nor the "Plea and Cooperation Agreement" and particularly nor the "Government's Version of the Facts", are judgments in any of the federal cases. None of said documents expose specific facts related to the granting of the LIMS contract. All the specific facts to which the co-defendants Habibe pleaded guilty are subsequent to the award of the LIMS contract and all have to do with alleged extortions for the payment to the co-defendants of the

execution of duties under the LIMS contract;

e) That the co-defendants Entec Corp., Consulta Económica y Planificación, Inc., Héctor Luis Rivas y Asociados; Habibe Enterprises, Inc., Active Consulting, Inc., Habibe Computer Corp., currently known as Venture Technologies Corp., Geotel, Inc., formerly Woolpert Puerto Rico, Inc., were never indicted nor convicted.

Regarding the **legal conclusions**, the defendant, in its request, stated the following:

a) That the "Government's Version of the Facts" are but biased versions of one party (e.g. Prosecutor's Office) as resolved by the First Instance Court of

Appeals in U.S. v. 200, 226.00 in U.S. Currency, 57 F. 3d. 1061;

b) That a guilty plea that is admissible in a subsequent lawsuit is not a concluding evidence of the facts, as resolved by the Supreme Court in Maysonet v. Granda, 133 D.P.R. 676, 679 (1993).

In the records of the case, even when, the filed motion requesting determination of facts and additional legal conclusions was timely filed, it does not meet the contents requirements that the forensic practice disposes, as outlined by the Supreme Court in Andino v. Topeka, supra. Let us see.

The motion filed by the defendant, in order for it to comply with the requirements that Rule 43.3 disposes and interrupts the appeals term, is not enough for it to request in it's title determination of

facts and additional legal conclusions, when instead, it must be well based.

The defendant, in its' plea, requests this Court to adopt the proposed determinations and conclusions. Nevertheless, upon evaluating the allegations included in the filed motion, are general allegations that do not inform this Court with sufficient particularity and specificity what are those specific proven facts that were not determined by the Court in its' Judgment and that according to the defendants knowledge should also be included. The motion is not well based. We will explain.

With respect to the deposition of Mr. Bernardo Negrón, which needless to say, was taken encouraged by the plaintiff as part of its' discovery of evidence, the defendant, did not detailed in his request what are those specific facts that ensue from the deposition. The defendant had to clearly inform

this court what were those determination of facts that he understood were proven and that should be included in the Partial Summary Judgment and, that are contrary to the resolved in the same. The same thing happens with the arguments of the defendant in relation to the different versions made by Mr. Eduardo Burgos which neither did he signal out nor specify in his request.

It must be indicated that the "Plea Agreement" of Mr. Bernardo Negrón[1] and the "Plea and Cooperation Agreement" of Mr. Eduardo Burgos[2] in the case U.S. v. Bernardo Negrón MISSING INFORMATION-PHOTOCOPYING ERROR – PAG.1347

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[1] Exhibit 11 of the Request for Summary Judgment filed on June 30, 2005 by the plaintiff.

[2] Exhibit 3 of the Request for Summary Judgment filed jointly by the parties in the heading of this document on December 17, 2004.

Granted under oath before the Federal Court, in a voluntary manner, and signed with the advise of their lawyers. These documents are part of the Judgment issued by the Federal Court in the case U.S. v. Bernardo Negrón, et. al., supra.

Any sworn statement to the contrary of Bernardo Negrón or Eduardo Burgos would constitute perjury. Not to mention that it would go against the credibility of the deponent. One cannot loose sight of the credibility that the Court can give to another declaration given under oath. See Exhibits 11 and 3 of the Request for Summary Judgment filed on June 30, 2005 by the plaintiff.

In so far as the arguments related to the co-defendants Tommy Habibe Arias and Tommy Habibe Vargas, the defendant is simply limited to show in his request that they did not plead guilty to any crime in or about the date in which the LIMS

contract was awarded. It does not propose which are the proven facts and what should the amendments or additional facts be that based on his judgment should be included. Based on this particularity there is on the Court file evidence that proves the contrary, these are the "Government's Version of the Facts"[4] attached to the "Plea and Cooperation Agreements". The admissibility of these documents was acknowledged and stipulated by the parties in the heading[5] of this document. These documents are part of the Judgment issued by the Federal Court against these co-defendants in the case of U.S. Bernardo Negrón et. al., supra. Said Judgment, even when it was not submitted by the parties before this

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[4] Exhibits 31 and 15 of the Summary Judgment Request filed on June 30, 2005 by the plaintiff.

[5] Motion to Comply with Order filed jointly by the parties in the heading of this document of December 17, 2004.

Court, the parties also stipulated its' admissibility.[6] The admissibility of these documents will be an aspect that we will be discussing further on in this Resolution.

In so far as the arguments related to the co-defendant corporation, the defendant restricts himself to mention in his request of determination of facts and legal conclusions that they were not indicted nor convicted of any crime. It does not explain, as required by Rule 43.3 of Civil Procedure, its' relevancy and a reasonable account that shows this Court what are those proven facts that according to his judgment should be included or amended. Regarding this particularity the Partial Summary Judgment issued by this Court clearly makes an

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[6] Motion to Comply with Order filed jointly by the parties on the heading of this document on December 17, 2004.

account of all the co-defendants and their relation[7] with the co-defendant corporations, as representatives, stockholders and owners of said corporation and the fraudulent acts related with the award of the LIMS contract.

In so far as the additional legal conclusions requested by the defendant, the defendant makes reference to jurisprudence to lay the foundations of its' allegations that the "plea agreements" are not the judgment and that the guilty pleas are not conclusive evidence of the facts. Nevertheless, it does not make a specific account of the errors, in so far as the material legal conclusions of the case, that according to his own judgment should be amended or included in the Partial Summary Judgment. The admissibility of judgment by a previous conviction

[7] Account that was also stipulated by the parties in the heading of this document its' *Joint Motion to Comply with Order in relation to the Corporations and their members* filed on October 27, 2006.

and of the pre-agreed allegations, will be discussed further on in this Resolution.

In the case referred to on the heading of this document, as it ensues from what is set forth in the request, and as previously mentioned, the request does not specifically make reference to not even in a brief manner, the specific facts that the defendant believes are proven, and that according to his judgment were not determined by this Court in its Partial Summary Judgment. Neither does it do the proper thing in so far as the additional material legal conclusions of the case.

PAGE 1349 MISSING INFORMATION-PHOTOCOPYING ERROR (TOP MARGIN)

Thence, having resolved the preceding, "Request for Reconsideration for Various Reasons" filed by the co-defendants on January 12, 2006, becomes academic.

## II. SUMMARY JUDGMENT

The plaintiff issued before this Court, on June 30, 2005, a Summary Judgment Request. This Court after a rigorous analysis of the submitted evidence and of the documents filed in the legal file, pronounced Partial Summary Judgment on December 7, 2005 and notified on December 13, declaring null *ab initio* the contract subscribed between the parties in the heading of this document object of the controversy.

In so far as the Summary Judgment pronounced, Rule 36.3 of Civil Procedures, 4 L.P.R.A. Ap. III R. 36.3, disposes the following in its' pertinency:

> "The requested judgment will be pronounced immediately, if the allegations, (depositions), answers to questionings and offered admissions, together with sworn statements, if there were any, demonstrate that

> there is no real substantial controversy regarding any material fact and as an issue of law summary judgment must be pronounced in favor of the promoting party...Said judgment can be pronounced in favor or against any of the parties in the lawsuit".

Rule 36 of Civil Procedure, 32 L.P.R.A. Ap. III R. 36, presents a valuable procedural instrument so that in appropriate situations judgment can be pronounced without the need of a hearing by trial. Its' purpose is of speeding the transaction of a case when from the attached documents ensues that a dispute does not exist from any essential material fact, but what remains is to apply the law. Corp. Presiding Bishop CJC of LDS v. Purcell, 117 D.P.R. 714 (1986); Tello, Rivera v. Eastern Airlines, 119 D.P.R. 83, 86 (1987); McCrillis v. Aut. Navieras de P.R., 123 86 (1989); Nassar Rizek v. Hernández, 123 D.P.R. 360 (1989); Consejo de Tit. C. Parkside v.

MGIC Fin. Corp., 128 D.P.R. 538 (1991); PFZ Props. Inc. v. Gen Acc. Ins. Co., 136 D.P.R. 881 (1994).

Nonetheless, the wise discernment is the governing principle for its use because, wrongly used, can be utilized to deprive a litigation of his day in court, elementary principle of a due legal process. It is for this reason that the court must make sure of the total inexistence of factual controversies and that the residue is the legal applications". Roig Com. Bank vs. Rosario Cirino, 126 D.P.R. 617-618 (1990); Consejo de Tit. C. Parkside v. MGIC Fin. Corp., supra.

**A. Opposition of the Defendant to Summary Judgment Request**

In the case on the heading of this document, the defendant did not oppose in a timely fashion the request for summary judgment.

The defendant now alleges that the pronounced Partial Summary Judgment does not proceed because it is premature. It's opposition is based on the fact that there was a pending discovery of evidence at the time that it was pronounced, that this Court had knowledge of this fact, and that this pending evidence was needed to properly oppose the request for summary judgment.

It is necessary to indicate that the intervention of this Court in relation to pending discovery of evidence was circumscribed to request both parties to agree, with the permission of the Court, to take the deposition of Mr. Bernardo Negrón upon his leaving the detention center.

It is also necessary to make clear that the party that was carrying out the pending discovery of evidence was the plaintiff, not the defendant.

As a general rule, to overthrow a summary judgment request, the opposing party should file sworn counter-declarations and counter-documents that cause a controversy with the facts presented by the plaintiff. If the defendant does nothing, he takes the risk of receiving judgment pronounced against him without holding a trial in court. Nevertheless, the mere fact of not opposing with evidence that disputes the one filed by the plaintiff does not necessarily imply that the summary judgment proceeds or that the plaintiff has the right for judgment to be pronounced in his favor. Corp., Presiding Bishop CJC of LDS v. Purcell, supra, page 721; Consejo Tit. C. Parkside v. MGIC Fin. Corp., supra;PFZ Props. Inc. V. Gen Acc. Ins. Co., supra. This means that the first instance courts will grant in each process, "the remedy to which it has a right the party to whom it is pronounced in favor of, even

when this party has not requested such remedy in its allegations...". Rule 43.6 of Civil Procedure, 32 L.P.R.A. Ap. III, Consejo de Tit. C. Parkside v. MGIC Fin. Corp., supra.

Upon considering a summary judgment motion, the Court will presume as true the non-controversial facts that are recorded in the documents and in the admissible sworn statements that are attached to the motion. Corp. Presiding Bishop CJS of LDS v. Purcell, supra, page 721. Nevertheless, in a summary judgment procedure the sworn statements that only include conclusions, without specific facts to support them, have no probative worth, therefore being insufficient to demonstrate the existence of what is concluded there". Id., page 722. See Rule 36.5 of Civil Procedure, 32 L.P.R.A. App. III.

Our system of laws disposes a term to oppose the Summary Sentence Request, and if opposition is not presented within this period of time, a permit must be obtained from the Court. The defendant had enough time to oppose the Summary Sentence Request. It did not do so. Upon the moment of filing the Summary Sentence Request until the pronouncement of Summary Sentence, more than six (6) months elapsed, time which the defendant had to oppose. The defendant filed time extensions that were granted, and the CRIM reiterated that we pronounce Summary Sentence because the defendants had no opposition. At any time did the defendants request the Court, except for the awarded extensions of time, granted and expired, that would permit to finalize with the alleged pending discovery of evidence in order to oppose the summary

judgment, or that it needed testimonial evidence to oppose the Summary Judgment.

Upon examining the "Reconsideration Request for several reasons" filed by the defendant on January 12, 2006, which is academic due to the previously indicated reasons, the same really constitutes a late opposition to the summary judgment request. The summary sentence request was filed by the plaintiff on June 30, 2005.

In this reconsideration motion the defendant submitted a sworn statement by Bernardo Negrón, under oath before a public notary on January 26, 2004; a Draft, dated November 2005, of the "Opposition to Motion requested Summary Judgment declaring null *ab initio* the LIMS Contract and returning to the CRIM the collected monies"; a draft of a sworn statement by Carlos J. Guilbe López, under oath before a public notary of December 12,

2002, which is attached to the draft of the opposition to summary judgment; a sworn statement by Tommy Habibe Vargas under oath before public notary of June 4, 2002, which is also attached to the draft of the opposition to summary judgment; minutes prepared by the Board of Directors of CRIM dated July 19, 1995; and the transcription of the deposition of Bernardo Negrón dated November 21, 2005.

This enclosures are evidence that the defendant had these sworn statements since the date arising from the documents, and even then they did not timely opposed the Request for Summary Judgment. Regarding the minutes prepared by the Board of Directors of CRIM, the court cannot issue probative weight to minutes where its' members acted ultra vires, and it already had tainted consequences.

**B. Evaluation of the Summary Judgment Request**

During the Hearing held on September 28, 2005 this Court questioned the defendant on what specific evidence is needed and indispensable to properly oppose the Summary Judgment Request and allege that it does not have to pronounce it. The defendant exposed that in order to prove that the contract is null ab initio the testimony of the extortioned co-defendants is needed.

The defendants allege that the crimes occurred from 1995 on, subsequent to the date the contract was awarded. It also alleges that this Court should not base its determinations in the "Government's Version of the Facts", because they are not the judgment.

Let us see.

Upon pronouncing summary judgment, the Court: 1) will analyze the documents attached to the summary judgment request, the documents included with the opposition motion, and those that are filed in Court. Medina v. M. S. & D. Química P.R., Inc., 135 D.P.R. 716, 722-723 (1994); and will 2) determine if the opponent controverted any material fact or if there are allegations from the lawsuit that have not been controverted or refuted in any way by the documents. The court does not pronounce summary judgment when: (1) controverted material facts exist; (2) when affirmative allegations exist in the lawsuit which have not been refuted; (3) when from the same documents that are attached to a motion ensues a real controversy over any material fact, or (4) when as an issue of law it does not proceed. Corp. Presiding Bishop CJS of LDS v. Purcell, 117 D.P.R. 714, 722-723, (1986); Cuadrado

Lugo v. Santiago Rodríguez, 126 D.P.R. 272, 280 (1990). Although the Court will pronounce Summary Judgment at its discretion, as a general rule, it is not advisable to resolve summarily complex cases or those that involve public interest issues. H.M.C.A. (P.R.), Inc., etc. V. Contralor, 133 D.P.R. 945 (1993); Corp. Presiding Bishop CJS of LDS v. Purcell, supra, pages 722, 723. PFZ Props., Inc., v. Gen. Acc. Ins., Co., supra, to page 913.

When the court takes into consideration a summary judgment motion, *it can assume judicial knowledge, just as it can do so in the trial and it can use stipulations and other documents upon resolving.* (Supplied emphasis.). St. Baptist Temple v. F.D.I.C., 605 F. 2d. 1169, 1172 (1979). Also see, Associated Press v. Cook, 513 F2d. 1169, 1172 (1975); attorneys' concessions, U.S. v. Dooley, 424 F2d.. 1067 (1975); certified transcripts of the court, Pye v. Dept., of

Transp., of the State of Georgia, 513 F2d. 290 (1975); or administrative agency, *and any other subject admissible in evidence or usable in trial.* A certified copy of a criminal cause can also be attached to the summary judgment to support its position. Fisher v. Shamburg, 624 F. 2d. 156, 162 N.7 (1980). *In addition, the accusation, verdict and judgment in support of the summary judgment motion can also be included.* See, Toro Lugo v. Ortiz Martínez, 105 D.P.R. 229 (1976). Also see, Fatach v. Seguros Triple S Inc., 147 D.P.R. 882 (1999); Maysonet v. Granda, 133 D.P.R. 676 (1993); Toro Lugo v. Ortiz,, 113 D.P.R. 56 N. 1 (1982); Morales Garay v. Roldán Coss, 110 D.P.R. 701, 707 (1981); Santiago Ojeda v. Cruz Maldonado, 109 D.P.R. 143, 146 (1979), Rivera vda. De Morales v. De Jesús Toro, 107 D.P.R. 826 (1978); Poll Sella v. Lugo, 107 D.P.R. 440, 550 (1978). José A. Cuevas Segarra, Tratado de Derecho Procesal

Civil, Tomo 1, San Juan: Publicaciones JTS, 2000, pages 602-603.

**1. Pre-Agreed Allegations-Previous Conviction Judgment**

By virtue of what is disposed in Rule 72 of Criminal Procedures, 34 L.P.R.A. Ap. II, a conviction judgment, resulting from a pre-agreed allegation, represents the acceptance by the court of a guilty plea made by the imputed once the court has made sure of the fact that this, "has been made with absolute knowledge, conformity and voluntariness of the imputed' which is convenient to a healthy administration of justice and has been met according to law and to ethics". Rule 72 (7) of Criminal Procedures, 34 L.P.R.A. Ap. II. Thereby, a judgment offered as evidence of the facts referred to is hearsay evidence, since it represents the opinion or belief of the court with respect to the truthfulness of

the allegation and of the facts on which it is based on. Thus, the referred to judgment constitutes inadmissible hearsay evidence, *with the exception that an applicable exception exists.* E.L. Chiesa, Práctica Procesal Puertorriqueña: Evidencia ('Puertorrican Procedural Practice: Evidence'), San Juan, Pubs. J.T.S., 1985, Vol. 1, Chap. VIII, pages 272 and ss. Maysonet v. Granda, supra, to pages 685-684.

Rule 62 of Evidence, 32 L.P.R.A. Ap. IV R. 62, disposes in its pertinency that:

> "It is admissible as an exception to the hearsay evidence rule a declaration offered against a party if the declaration:
>
> (A) Is made by said party, in its' individual character..."

As disposed by quoted rule, it is admissible in evidence against a party any manifestation or

conduct that intends to discredit or contradict any of its contentions. It is sufficient for the manifestation or admission to the contrary to the interest of the deponent at the moment that it is offered against him as evidence. E.L. Chiesa, Práctica Procesal Puertorriqueña: Evidencia, ('Puertorrican Procedural Practice: Evidence'), San Juan, Pubs. J.T.S., 1985, Vol. I, Chapter VIII, pages 292 to 312, Maysonet v. Granda, supra.

Now then, when the admission of a party culminates in the conviction of a criminal judgment, the admissibility as substantive evidence of the admission and the resulting judgment is conditioned to the disposition of Rule 65 (V) of Evidence, 32 L.P.R.A. Ap. IV R. 65 (V), that in its pertinence establishes the following:

> "It is admissible as an exception to the hearsay evidence rule

> even when the deponent is available as witness:
>
> (V) Previous conviction judgment: Evidence of a final judgment, after trial or after pleading guilty, pronouncing a person of felony, offered to prove any essential fact to support the conviction judgment."

The previously quoted rule limits the admissibility of a conviction judgment to felony cases. Misdemeanors are excluded due to the minor economic and libertarian incentive that the imputed has to litigate a misdemeanor accusation. The lack of incentive to litigate is limited by the severity of the conviction to which the imputed is exposed. Maysonet v. Granda, supra.

By virtue of Rule 65 V of Evidence, 32 L.P.R.A. Ap. IV, the criminal judgment for a felony is admissible in the civil action to prove any essential fact to support the criminal judgment. Toro Lugo v.

Ortiz Martínez, 105 D.P.R. 229 (1976); Maysonet v. Granda, 133 D.P.R. 676 (1993); Fatach v. Seguros Triple S, Inc., 147 D.P.R. 882 (1999).

As is well known, the principal basis for the admissibility and the substantive effect of the criminal judgment is the difference between the required level of evidence versus a civil one. In a criminal cause it is required to establish the guiltiness of the accused beyond a reasonable doubt, while in a civil action the cause of action must be proven through "preponderance of the evidence on the basis of probability issues..."Rule 10(F) of Evidence, 32 L.P.R.A., Ap. IV. Fatach v. Seguros Triple S, Inc., supra.

The substantive aspect over the admissibility of a conviction judgment for a felony in a subsequent civil action was clearly resolved in Toro Lugo v. Ortiz Martínez, supra. Specifically, in the quoted case the

Supreme Court concluded that the proven facts in a penal action, even when they are not concluding to the point of excluding its re-litigation in the damages action originated by them, constitute prima facie evidence of its existence, admissible in a civil action. The party for whom said evidence results adverse, has the right to allege insufficiency, or to controvert it with another evidence and the judger will make its own appraisal of the evidence which might concur or not with the appraisal of the same in the criminal action. The judger of the civil action can make its own appraisal of all the evidence, managed by the underlying principle, among others, of the diverse nature and finality of the exercised acts in a criminal action and in a civil action. Toro Lugo v. Ortiz Martínez, supra; Maysonet v. Granda, supra; Fatach v. Seguros Triple S, Inc., supra.

In the case in the heading of this document, this Court upon pronouncing Partial Summary Judgment based its' determination in the voluminous and abundant evidence submitted by CRIM with its request for Summary Judgment filed on June 30, 2005. Evidence that was not objected to by the defendant.

This Court made a rigorous analysis of the evidence kept in the legal file and pronounced summary sentence having before itself the necessary legal elements. The facts were not pre-judged. Let us see.

The documented evidence submitted by CRIM is a robust and sufficient evidence. They are documents stipulated[8] by all the parties in the

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[8] Motion in Order to Comply filed jointly by the parties in the heading of this document on December 17, 2004; Motion in Order to Comply related with the corporations and its' members filed on October 27, 2006.

heading of this document. These documents are among others, the Judgments of the Federal Court for felonies in the case of U.S. v. Bernardo Negrón, et al., supra, and the, "Plea Agreements", and the "Plea and Cooperation Agreements", attached thereto. The "Government's Version of the Facts" are part of the case and of the Judgment in the Federal Court.

In the case before us, the "plea agreements" or the pre-agreed to allegations of the co-defendants, constitute an admission of having committed said felonies. Those admissions as well as the judgments included, are subject to the dispositions of Rules 62 and 65 (V) of Evidence, 32 L.P.R.A., Ap. IV, respectively, referring to the admissibility in evidence in part and of a previous conviction judgment. In so far as the previous conviction judgment for a felony of which the "plea agreements" are part of, or the pre-agreed to allegations of the co-

defendants, is admissible in evidence in this civil cause, since there are some facts in common that give way to both procedures and constitute prima facie evidence of every fact in common or relevant to the two acts. Toro Lugo v. Ortiz Martínez, supra; Maysonet v. Granda, supra.

It must be indicated that the "Government's Version of the Facts" attached to the "Plea Agreements" and the "Plea and Cooperation Agreements" are documents signed voluntarily by the co-defendants and enclosed by their attorneys, they are the version of the facts submitted by the State that led the co-defendants to accept their criminal responsibility. Both documents are part of the Judgment issued in the Federal Court. It must be underlined that these judgments for previous convictions are not misdemeanors, but rather convictions for felonies. In these documents, the co-

defendants were forewarned that any contrary declaration could constitute perjury. In the "Statement of Facts", that are incorporated to said documents, the co-defendants accept and adopt that the facts therewith agreed are true and that if trial would have been held over those facts, the State would have proven the facts beyond any reasonable doubt. Let us see.

From the evidence included in the legal document clearly ensues, from Bernardo Negrón's "Plea Agreement", and from Tommy Habibe Vargas a/k/a Tommy, Jr., Tommy Habibe Arias, a/k/a Tommy, Sr., and Eduardo Burgos Lebrón's "Plea and Cooperation Agreements", the following[9]:

Statement of Facts:

The accompanying Statement of Facts sign4ed by the defendant

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[9] Exhibits 3, 11, 15 and 31 of the Request for Summary Judgment filed on June 30, 2005 by the plaintiff.

> is hereby incorporated into this Plea Agreement/Plea and Cooperation Agreement. Defendant adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and, had the matter proceeded to trial, that the United States would have proven those facts beyond a reasonable doubt."

Specifically from the "Government's Version of the Facts", attached to the "Plea Agreement", or the "Plea and Cooperation Agreement" that at the same time are part of the Judgment by Conviction, the following comes forth:

**Bernardo Negrón Montalvo**[10]:

> "In or about June 1994, and continuing through in or about March 2000, in the District of Puerto Rico and elsewhere, within the jurisdiction of this Court, defendant Tommy Habibe Arias, a/k/a Tommy, Sr.,

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[10] Exhibit 11 of the Request for Summary Judgment filed on June 30, 2005 by the plaintiff. See also Minutes of the Hearing held on May 18, 2005 where the transcription was read.

while serving as the president of Habibe Enterprises, a member of the Consortium who was awarded the LIMS contract by CRIM ("Centro de Recaudaciones de Ingresos Municipales"), participated in a conspiracy with Bernardo Negrón Montalvo, Eduardo Burgos Lebrón, Margarita Sanfeliz Wu, Tommy O. Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Carlos Serra Vélez, Benjamín Wu, Haydeé Figueroa Guzmán, and José Rafael Vázquez, and others, to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm in violation of Title 18, United States Code, Sec. 1951".

**Eduardo Burgos Lebrón**[11]:

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[11] Exhibit 3 of the Request for Summary Judgment filed on June 30, 2005 by the plaintiff. See also Minutes of the Hearing held on May 18, 2005 where the transcription was read.

"In or about June 1994, and continuing through in or about March 2000, in the District of Puerto Rico and elsewhere, defendant Eduardo Burgos Lebrón, while serving as Executive Director of Centro de Recaudaciones de Ingresos Municipales (hereinafter "CRIM"), participated in a conspiracy with Bernardo Negrón Montalvo, Margarita Sanfeliz Wu, Tommy R. Habibe, Sr., Tommy O. Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, a/k/a "Jacko", Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Carlos Serra Vélez, Benjamin Wu, Haydeé Figueroa Guzmán, and José Rafael Vázquez and others, to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official authority and fear of economic harm in violation of Title 18, United States Code, Sec. 1951".

**Tommy Habibe Vargas, a/k/a Tommy, Jr.**[12]:

"In or about June 1994, and continuing through in or about March 2000, in the District of Puerto Rico and elsewhere within the jurisdiction of this Court, defendant Tommy Habibe Vargas, a/k/a Tommy, Jr., while serving as the President and owner of Entec Corporation, a member of the Consortium who was awarded the LIMS contract by CRIM ("Centro de Recaudaciones de Ingresos Municipales"), participated in a conspiracy with Bernardo Negrón Montalvo, Eduardo Burgos Lebrón, Margarita Sanfeliz Wu, Tommy Habibe Arias, Héctor Luis Rivas, John P. Stephens Rexach, Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Carlos Serra Vélez, Benjamin Wu, Haydeé Figueroa Guzmán, and José Rafael Vázquez and others, to unlawfully affect commerce and the movement of articles and commodities in commerce

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[12] Exhibit 15 of the Request for Summary Judgment filed on June 30, 2005 by the plaintiff. See also Minutes of the Hearing held on May 18, 2005 where the transcription was read.

by extortion under color of official right and fear of economic harm in violation of Title 18, United States Code, Sec. 1951".

**Tommy Habibe Arias, a/k/a Tommy, Sr.**[13]:

"In or about June 1994, and continuing through in or about March 2000, in the District of Puerto Rico and elsewhere, within the jurisdiction of this Court, defendant Tommy Habibe Arias, a/k/a Tommy, Sr., while serving as the President of Habibe Enterprises, a member of the Consortium who was awarded the LIMS contract by CRIM ("Centro de Recaudaciones de Ingresos Municipales (hereinafter "CRIM"), participated in a conspiracy with Bernardo Negrón Montalvo, Eduardo Burgos Lebrón, Margarita Sanfeliz Wu, Tommy O. Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, Cándida Rodríguez Larrendowtte, Wanda

[13] Exhibit 31 of the Request for Summary Judgment filed on June 30, 2005 by the plaintiff. See also Minutes of the Hearing held on May 18, 2005 where the transcription was read.

> Rodríguez Hernández, Carlos Serra Vélez, Benjamin Wu, Haydeé Figueroa Guzmán, and José Rafael Vázquez and others, to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official authority and fear of economic harm in violation of Title 18, United States Code, Sec. 1951".

The documented evidence submitted by CRIM to form the essential basis for the alleged facts, are documents on which the Court has no reasons to believe that they are not legally valid, certain and correct, especially the ones that form part of the case held before the federal court and from which, inclusive, we can legally acknowledge.

We cannot loose the perspective of what is the effect of a guilty plea. By admission of the parties they are disabled to go against their own acts. The defendant cannot pretend to exclude what happened

before the process led before the Federal Court, that resulted in the conviction of the co-defendants.

As it ensues from the evidence in the records of the case, without a doubt, some of the individual co-defendants in their different representative characters either as representative of the corporation and/or as representative of the public interest and those that do not fall into these categories, in their personal characters, made some delinquent acts prior to the awarding of the contract that makes the same null. The cause was illicit, fruit of the poisoned tree.

Therefore, for all that has been previously exposed, the defendant cannot rebut with mere allegations, without documents, the strong evidence that remains in the legal file. Therefore, the determination issued by this Court in its Judgment is sustained.

The relationship of the individuals and the co-defending corporations, is clearly detailed and itemized in the Summary Judgment. Even more, the plaintiff, the CRIM, and the co-defendants, Entec, CEPI, Mr. Tommy Habibe Arias (Sr.), Mr. Tommy Habibe Vargas (Jr.), Mrs. Elsa M. Burgos, HEI, Creative Consulting, Venture Technologies Corp., Geotel, Inc., represented by their respective attorneys stipulated in the "Joint Motion to Comply with Order in relation to the Corporation and its Members", filed on October 27, 206, the same information that arises from the voluminous legal file.

This account, beyond any doubt, is the following:

1. **Entec Corporation (ENTEC)**

   a) Mr. Tommy Habibe Varags (Habibe, Jr.) was the President of Entec. Mr. Habibe, Jr., and his father Tommy R.

Habibe Arias (Habibe, Sr.), were the owners of Entec.[14]

b) Since 1995 until 1999 the stockholders for Entec were: Tommy Habibe, Sr. (50%) and Tommy Habibe, Jr. (50%).[15]

c) Since 1995 until 1999 the Board of Directors of Entec consisted of Tommy R. Habibe (Sr.), Tommy Habibe, Jr., and Frankie Habibe. [16]

d) Since 1994 until 1999, according to the Annual Corporation Reports[17], the following were the officers of Entec for the following years:

(1) 1994: President- Tommy O. Habibe Vargas, (Jr.); Treasurer- Tommy O. Habibe Vargas, (Jr.);

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[14] See Paragraph 6 of the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others.

[15] See Paragraph 172 of the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[16] See Paragraph 174 of the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[17] See Paragraph 175 of the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

Secretary-Frankie Habibe Vargas.

(2) 1995: President- Tommy O. Habibe Vargas, (Jr.); Vicepresident – Tommy O. Habibe Vargas, (Jr.); Secretary-Frankie Habibe Vargas; Director of Operations- Tommy O. Habibe Vargas (Jr.).

(3) 1996: President/Treasurer – Tommy O. Habibe Vargas, (Jr.); Secretary- Frankie Habibe Vargas; Director of Operations- Tommy O. Habibe Vargas, (Jr.).

(4) 1997: President- Tommy O. Habibe Vargas, (Jr.); Treasurer- Tommy R. Habibe Arias, (Sr.); Secretary- Frankie Habibe Vargas; Director of Operations- Tommy O. Habibe Vargas, (Jr.).

(5) 1998: President- Tommy O. Habibe Vargas, (Jr.); Secretary- Frankie Habibe Vargas; Treasurer- Tommy R. Habibe Arias, (Sr.).

(6) 1999: President- Tommy O. Habibe Vargas, (Jr.); Secretary- Tommy O. Habibe Vargas; Treasurer- Tommy R. Habibe Arias, (Sr.).

e) Mr. Tommy R. Habibe, (Sr.) was the "Chairman" of Entec.[18]

f) During the years 2000 and 2001 the only officer for Entec, its President, Secretary and Treasurer was Mr. Wilfredo Marrero, as it ensues from the Corporation Reports filed before the Department of State.[19]

**2. Consulta Económica y Planificación, Inc. (CEPI)**

a) On January 10, 1985 Consulta Económica y Planificación, Inc. (CEPI) filed its Incoporation Certificate before the Department of State.[20]

b) Before February, 1996 Mr. Nelson Soto was the President of CEPI. Mr. Nelson Soto died on February, 1996.[21]

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[18] See Paragraph 176 of the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[19] See Paragraph 177 the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[20] See Paragraph 203 the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[21] See Paragraph 8 the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

c) The Annual Corporation Report[22] of 1985 was filed on October 5, 1998 and as officers and directors appear Tommy R. Habibe, (Sr.), Tommy O. Habibe Vargas, (Jr.), and Frankie Habibe. The officers are:

(1) President- Tommy R. Habibe (Sr.).

(2) Treasurer- Tommy O. Habibe (Jr.).

(3) Secretary- Frankie Habibe

This Annual Report stated that CEPI has no operations for the year 1985.

d) The Annual Corporation Report for CEPI for the year 1986 was filed on October 5, 1998 and as officers and directors appear Tommy R. Habibe, (Sr.) and Tommy O. Habibe, (Jr.). These state that there were no operations for the year 1986.[23]

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[22] See Paragraph 206 the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[23] See Paragraph 208 the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

e) An Annual Coproration Report was filed for the year 1987 before the Department of State on October 5, 1998. As officers and directors appear Tommy R. Habibe, (Sr.) and Tommy O. Habibe, (Jr.), and state that for the year 1987 there were no operations.[24]

f) The Annual Corporation Report for the year 1988 was filed on October 5, 1998. On the same it is stated that the directors were Tommy R. Habibe, (Sr.), Tommy O. Habibe, (Jr.) and Frankie Habibe. Officers assigned were:

(1) President- Tommy R. Habibe (Sr.)

(2) Treasurer – Tommy O. Habibe

(3) Secretary – Frankie Habibe

There were no operations as indicated.

g) On October 5, 1998 the Corporation Report for CEPI was filed for the year 1994. Assigned directors were Tommy

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[24] See Paragraph 210 the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

R. Habibe (Sr.), Tommy O. Habibe and Frankie Habibe. Assigned officers were:

(1) President – Tommy R. Habibe (Sr.)

(2) Treasurer – Tommy O. Habibe

(3) Secretary – Frankie Habibe

h) The Corporation Report[27] of 1995 for CEPI, filed on September 19, 1996, reflects as directors at the time of filing, Mr. Tommy R. Habibe (Sr.). As assigned officers:

(1) President, Treasurer and Secretary – Tommy R. Habibe (Sr.)

i) The Corporation Report of 1996 for CEPI was filed on April 17, 1997. It stated that the operating Director, President, and Treasurer at the time of filing was Mr. Tommy R. Habibe (Sr.).[28]

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[27] See Paragraph 222 the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[28] See Paragraph 226 the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

j) The Corporation Report[29] of 1997 for CEPI was filed on April 15, 1998 and stated that the operating directors at the time of filing referred report were Tommy R. Habibe (Sr.), Tommy O. Habibe (Jr.) and Frankie Habibe. Its officers were:

(1) President - Tommy O. Habibe (Jr.)

(2) Treasurer and Chairman - Tommy R. Habibe (Sr.)

(3) Secretary – Mr. Frankie Habibe

k) The Corporations Report[30] of CEPI for 2000 was filed on April 17, 2001. States that the operating director at the time of the filing was Mr. Wilfredo

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[29] See Paragraph 227 the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[30] From the Second Amended Lawsuit ensues other corporation reports for CEPI for the years 1985-1990 and 1992-1993. (Paragraphs 207, 209, 211, 213, 214, 215, 216, 217 of the Second Amended Lawsuit). The co-defendant CEPI, Habibe Sr., Habibe Jr., and his wife, deny this for missing information and belief.

Marrero and the Secretary was Mr. Wilfredo Marrero.[31]

l) The plaintiff alleged that Mr. Wilfredo Marrero is and was, at the time of the alleged facts in the Second Amended Lawsuit, an employee of Habibe, Sr., and/or Habibe, Jr., nd/or for some of the corporations controlled by them.[32] The answer of Entec, CEPI, Habibe, Sr. and Habibe, Jr., and Elsa M. Burgos, of December 15, 204, and of Habibe Enterprises, Inc., Creative Consulting, Inc., (formerly Active Consulting, Inc.), Venture Technologies Corp. (formerly Habibe Computer Corp.), Geotel, Inc. (formerly Woolpert P.R., Inc.) with the same date, was: "It is denied that Wilfredo Marrero is an employee of any party in this lawsuit. It is admitted that Mr. Marrero was employed in the past".).

**3. Héctor Luis Rivas y Asociados ("HLRA")**

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[31] See Paragraph 231 the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[32] See Paragraph 178 of the Second Amended Lawsuit.

a) Mr. Hector L. Rivas was President and Owner of HLRA.[33]

b) Mr. John P. Stephens Rexach was business partner of Mr. Hector L. Rivas and Vicepresident of HLRA.[34]

**4. Habibe Enterprises, Inc. ("HEI")**

a) Habibe Enterprises, Inc., was incorporated on December 9, 1997.[35]

b) The Annual Corporation Report[36] for the year 1998 states that the directors were Tommy R. Habibe (Sr.), Tommy O. Habibe (Jr.) and Frankie A. Habibe. The officers were:

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[33] See Paragraph 20 of the Second Amended Lawsuit. HLRA, Mr. Hector L. Rivas, his wife, Mrs. Rivas, J.P. Stephens, his wife and their legal community of properties were filed with contempt of court, therefore the well alleged facts are admitted. (See Subpoena filed on February 26, 2003.)

[34] See Paragraph 21 of the Second Amended Lawsuit.

[35] See Paragraph 248 of the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[36] See Paragraph 249 of the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

(1) President: Tommy O. Habibe (Jr.)

(2) Treasurer: Tommy R. Habibe (Sr.)

(3) Secretary: Frankie A. Habibe

MISSING PAGE – PHOTOCOPYING ERROR 1364

c) The Annual Corporation Report for HEI for the year 1999 states that Mr. Wilfredo Marrero, was entrusted as Director, President and Treasurer of Habibe Enterprises, Inc.[37]

d) The Annual Report of HEI for the year 2000 entrusts Mr. Wilfredo Marrero as Director and President of Habibe Enterprises, Inc.[38]

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[37] See Paragraph 250 Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[38] See Paragraph 251 of Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

**5. Creative Consulting, Inc. (formerly known as Active Consulting, Inc.)**

a) Mr. Tommy R. Habibe Arias (Jr.) is owner of Active Consulting, Inc.[39]

**6. Venture Technologies Corp. (formerly known as Habibe Computer Corp.)**

a) Habibe Computer Corp. (HCC) is an incorporated corporation on November 26, 1980 before the Department of State. Its incorporators were Mr. Tommy R. Habibe (Sr.), Dharma Vargas Duran and Wilfredo Marrero.[40]

b) On June 19, 2000 an amendment to the certificate of incorporation was filed to change the name of Habibe Computer Corp., to Venture Technologies Corp., certificate which appears signed by Tommy R. Habibe as officer.[41]

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[39] See Paragraph 7 Second Amended Lawsuit and its answer by Creative Consulting, Inc., dated December 15, 2004.

[40] See Paragraph 238 Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[41] See Paragraph 239 Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

c) The Corporation Report of HCC of 1980 refers that the director of HCC were Tommy R. Habibe (Sr.), Wilfredo Marrero and Sonia Habibe. Its President was Tommy R. Habibe (Sr.), its Vice President Wilfredo Marrero, its Treasurer Sonia I. Habibe and its Secretary Wilfredo Marrero.[42]

d) The Corporation Reports of HCC[43] of 1995 and 1996 entrust the directors as Tommy R. Habibe (Sr.), Tommy O. Habibe (Jr.), and Frankie Habibe. In 1995 the officers were:

(1) President – Tommy O. Habibe (Jr.)

(2) Secretary and Vice President – Frankie Habibe

(3) Treasurer – Tommy O. Habibe (Jr.)

In 1996 the officers were:

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[42] See Paragraph 240 of the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

[43] See Paragraph 241 of the Second Amended Lawsuit and its answer by Entec, Habibe, Jr., and Habibe, Sr., among others, dated December 15, 2004.

(1) President and Treasurer – Tommy O. Habibe (Jr.)

(2) Secretary – Frankie Habibe

**7. Geotel, Inc. (formerly known as Woolpert Puerto Rico, Inc.)**

a) Messrs. Habibe Sr. And Habibe Jr., are not absolute owners of Woolpert Puerto Rico, Inc., since a minority owner exists.[44] Note THERE IS MISSING INFO REGARDING WHO IS THE MINORITY OWNER-DOES NOT APPEAR IN CONT. OF 2ND. AMENDED LAWSUIT.

**8. Urbanística, LTD**

a) Mrs. Margarita Sanfeliz was the President of Urbanística, LTD, a corporation organized under the laws of the State of Virginia, corporation which was controlled by Margarita Sanfeliz and/or her husband, Mr. Benjamin Wu.[45]

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[44] See Answer of Geotel, Inc. to Paragraph 7 of the Second Amended Lawsuit, dated February 15, 2004.

[45] See Paragraph 20 of the Second Amended Lawsuit, Exh. 5 of the Summary Judgment, and Paragraph 20 of Margarita

## 2. Limited Responsibility of the Corporation – Beginning of Tearing the Corporate Veil

In the current case, in light of the particular facts of the same and of the voluminous evidence that arises from the legal file, the independent juridical personality of the co-defending corporations of its stockholders cannot be sustained. Let us see.

The LIMS Contract was subscribed on July 20, 1995 between CRIM, represented by its' Executive Director Eduardo Burgos Lebrón, and the Consortium composed by Entec, Corp., represented by its President, Tommy Habibe; Consulta Económica y Planificación (CEPI), represented by its President Nelson Soto Velázquez and Héctor Luis

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Sanfeliz's Answer accepting said allegations, Exh. 6 of Summary Judgment.

Rivas & Associates (HLR, represented by its' President Héctor L. Rivas).

The LIMS Contract is null *ab initio* as much by the acts of the co-defended individuals in their personal characters as representatives of the Corporation, as well as by the acts of the individuals who represented the CRIM. The CRIM upon being a governmental entity does not commit a crime, it is not the one who becomes involved in a delinquent activity, but it rather was the persons who represented it. Those illegal acts of its' representatives, before granting the contract also make the cause illicit, joined by the fact that the representatives of CRIM as much as the other co-defendants admit to committing the criminal facts before the contract was granted. It is not important if payment was made or not before the contract was granted.

As is well known, in Puerto Rico before payment can proceed in account of any granted contract with a governmental entity it has to be signed and inscribed in the Comptrollers's Office. It is so disposed by Law No. 18 of October 30, 1975, as amended, 2 L.P.R.A. sec. 97, known as "Law for Registering Contracts in the Controller's Office of Puerto Rico". The fact that payment had not been made prior to granting the contract does not defeat the fact of not being an illicit cause and that the delinquent conduct has not occurred.

Corporations are entities created "for accomplishing or promoting any business, or legal purpose", 14 L.P.R.A. sec. 2601.[46] The corporation also has its own legal[47] personality and its own

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[46] See also L.M. Negrón Portillo, *Derecho Corporativo Puetorriqueño* "(Puertorrican Corporate Law"), 2nd. Edition 1996, to page 5.

[47] See 31 L.P.R.A. sec. 101; 14 L.P.R.A. sec. 2652.

patrimony, different to the personality and patrimony of its stockholders, even when they are natural or juridical[48], D.A.C.O. v. Alturas de Florida Development Corp., 132 D.P.R. (905 (1993). The corporations have an independent life, before the eyes of the law. L.M. Negrón Portillo, Derecho Corporativo Puertorriqueño ("Puertorrican Corporate Law"), 2da. Ed., 1996, to page 11.

That the corporation has its own legal personality implies that it has a limited responsibility, this means that the stockholders of the corporation are ordinarily separated from the corporation in so far as it refers to responsibility. The responsibility of the corporation is neither

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[48] D.A.C.O. v. *Alturas de Florida Development Corp.*, 132 D.P.R. 905 (1993); Sunc. Santaella v. Srio de Hacienda, 96 D.P.R. 442, 451 (168); Sucn. Pérez v. Gual, 76 D.P.R. 959, 963 (1954); *Cruz v. Ramírez*, 75 D.P.R. 947 (1954); *Swiggett v. Swiggett*, Inc. 55 D.P.R. 76, 83 (1939). See also C.E. Díaz Olivo; *Derecho Corporativo, Corporaciones* ("Corporate Law, Corporations"); Publicaciones Puertorriqueñas Editores, Ed. 1999, to page 53.

shared with its stockholders, that is, there is no jointly binding responsibility nor solidarity between stockholders and the corporation. This principle of a limited responsibility is not absolute. L.M. Negrón Portillo, supra, to pages 12-13.

Said juridical personality does not necessarily disappear for the reasons that a natural person owns all the stocks of the coporation. Swiggett v. Swiggett, Inc., 55 D.P.R. 76 (1939). L.M. Negrón Portillo, supra, page 11. The fact that the corporation as a juridical entity can only act through natural persons, merely explains a reality. What does have importance and juridical consequences nevertheless is, that the acts of those directors on behalf of the corporate patrimony is a corporate effort, not personal. To pretend the contrary would be equivalent to lifting the corporate veil. (Sucn.

Santaella v. Srio. de Hacienda, 96 D.P.R. 442, 451-452 (1968).

The doctrine of tearing the corporate veil to impose a personal responsibility to the stockholders is the exception to the rule.[49] As a general rule, the independent juridical personality of the corporations, will be respected, unless there is enough basis to justify doing the opposite.[50] South P.R. Sugar Corp. v. Junta Azucarera, 88 D.P.R. 43, 55 (1963).

The courts will lift the corporate veil and will consider the corporations as associations of natural persons when the principle of the corporate juridical personality is used to destroy the public policy, avoid the compliance of regulations, justify inequitability,

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[49] See Roberto Colón Mach & Mfg. Co. v. Srio. de Hacienda, 78 D.P.R. 912 (1956). See also C. E. Díaz Olivo, supra, to page 53.

[50] See also L.M. Negrón Portillo, supra, to page 13.

promote injustice, protect fraud, or defend crime.[51] South P.R. Sugar Corp. v. Junta Azucarera, supra. The courts in this case upon leaving out the juridical personality of a corporation will subject the stockholders' patrimony to respond to the debts and obligations of the corporation. See D.A.C.O. v. Alturas de Florida Development Corp., supra; L.M. Negrón Portillo, supra to page 434.

Our code of laws does not permit that the interpolation of a corporation ruins a legislative policy, regardless if that is the purpose or only the result of an arrangement. South P.R. Sugar Corp. v. Junta Azucarera, supra, to page 57. When corporate entities are created as instruments to avoid a legislative purpose, the courts must not be deceived or robbed of judgment, by mere formalities and

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[51] See also C.E. Díaz Olivo, supra, to pages 53-54.

should handle the substance of things as if corporate fiction does not exist and according to the justice that the case deserves. South P.R. Sugar Corp. v. Junta Azucarera, supra, to page 57.

The application of the principle of lifting the corporate veil will depend upon the facts and the specific circumstances of the particular case in the light of the filed evidence. Our Supreme Court established it in Cruz v. Ramírez, 75 D.P.R. to page 954, upon concluding that "if in determined cases corporate fiction will be disregarded, that will depend from the specific facts of each case in light of the general principles...and that must be resolved by the first instance court upon considering the evidence. D.A.C.O. v. Alturas de Florida Development Corp., supra, to page 926.

The burden of proof rests in the part that imposes the imposition of individual responsibility to

the stockholders and corresponds to the first instance court to determine, after evaluating the evidence, if the lifting of the corporate veil proceeds. D.A.C.O. v. Alturas de Florida Development Corp., supra. Upon examining the evidence, the court must observe the nature of the corporate transactions and not be deceived by the formalities of the same. South P.R. Sugar Corp. v. Junta Azucarera; D.A.C.O. v. Alturas de Florida Development Corp., supra.

In the current case, the LIMS contract awarded by the parties in the heading of this document, is a contract that has been corrupted and is contrary to the public interest. In the LIMS contract the corporations that intervened or which continued throughout its stockholding directors and officers cannot invoke corporate protection when the persons who represented it were obliged by the contract object of the current litigation perpetrated

illegal acts and pleaded guilty to the same. The result of this criminal acts was the profit of the corporations and consequently the profit of its owners or stockholders. When there is not legitimate cause, the coverage is not granted to the shareholders.

In the case in the heading of this document, all the standards to tear the corporate veil are met. All of the circumstances to lift the corporate veil are present. It so clearly ensues from the analysis the Judgment pronounced summarily includes. To acknowledge separate juridical personalities to the co-defending corporations of its stockholders would be the equivalent of allowing: to protect fraud, to promote injustice, to avoid a statutory obligation, to defeat the public policy, to justify inequity, to defend

crime.[52] Therefore, upon being present according to rule and order each and every one of the elements, the compelling effect of the Judgment is that the corporate veil has been lifted. It is so established, by the evidence that remains in the legal file.

Nobody has nor should have preferential treatment before any court of law. The laws should serve Justice, and Justice should be bestowed on equal terms upon everyone. Colón v. AFF, 112 D.P.R. 693, 695 (1982). To bestow justice something else than just the mere technical applications, isolated from legal precepts must be conceded...the law is an instrument of justice and not vice versa. Jordán Rojas v. Padró González, 103 D.P.R. 813, 815

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[52] *Srio. de DACO v Comunidad San José, Inc.*, 130 D.P.R. 782, 798 (1992); *Cruz v. Ramírez*, 75 D.P.R. 947, 954 (1954), *Fleming v. Toa Alta Development Corp.*, 96 D.P.R. 240, 243, (1968), *San Miguel Fertilizer Corp., v. P.R. Drydock*, 94 D.P.R. 424, 430 (1967); *United States v. Milwaukee Refrigerator Transit Co.*, 142 F. 247, 255 (E.D. Wis. 1925).

(1975); Pérez Mercado v. Martínez Rondón, 130 D.P.R. 134 (1992).

The faith of the people in the justice system that prevails in our country is indispensable for the general well being of the same. That faith is only preserved by the measure in which its citizens trust the integrity, honesty and fairness of those who have the noble task of administering justice. Lind Flores v. Cruz Morales, 2003 TSPR 151.

Justice cannot be an ally of those public servants and private parties that not only looted the public funds, when instead they acted contrary to the same justice, doing something deceitful, fraudulent and illegal have weakened and undermined the Faith in public institutions and the respect that the citizens have in the same. As our Supreme Court has indicated in In re Cuyar Fernández, 2004 JTS 168, "Playing hide and go seek with justice is playing hide

and go seek with truth...." The defendants cannot use technicalities or legal maneuverings clearly unsuitable our interpreting the law contrary to how it should be.

For everything previously exposed, the Partial Summary Judgment remains in full power. The Reconsideration Request does not proceed as requested by the defendant. As previously indicated it is academic.

## III. ARBITRATION

The parties in the heading of this document agreed that any dispute or difference that would arise in relation to the LIMS contract, that could not be solved by the parties, would be adjudicated by means of an arbitration procedure.

After several procedural transactions this Court issued on June 27, 2002 a resolution which stopped arbitration procedure until it was

determined through a final and solid judgment the validity of subject contract. It was determined in this resolution that when a contract is challenged because it was never born, that is, for being null *ab initio*, one of the parties cannot be forced to precisely arbitrate the nullity of the contract covered by an arbitration clause which is part of the challenged contract. That is why, it was exposed in the resolution that the arbitration clause cannot escape the impugnation that the plaintiff makes of the contract in general, whereas we should interpret that it does the same for the alleged arbitration clause.

In disagreement with the pronounced Resolution, the defendant filed a Certiorari Petition, on July 29, 2002, before the Court of Appeals requesting the revision of the Resolution of this Court. The Court of Appeals, in its Judgment pronounced on October 31, 2002, confirmed the

Resolution issued by this Court. The Court of Appeals indicated that the facts that are the basis of the current controversy prevents the determination, at this time, of the extent that the arbitration clause has. This is due to the arbitration clause which is tied to the contract in which it is included. The contract in question is before a nullity *ab initio* impugnation whose determination belongs to the courts, since, it could void (if the nullity of the contract is determined) the base of the arbitrators' jurisdiction.

On May 30, 2006, it is has been filed before us once again, the controversy regarding the arbitrability of the validity of the contract object of the current litigation. The co-defendants filed before our consideration a "Repeated Motion to overrule for lack of jurisdiction under the Federal Arbitration Act

and the Opinion of the Federal Supreme Court: Buckeye Check Cashing, Inc. v. Cardegna".

In this motion, the co-defendants, raise the issue that the new federal decision Buckeye Check Cashing, Inc. v. John Cardegna, 546 U.S. ____, 126 S. Ct. ____, 163 L. Ed. 2d 1038, resolved on February 21, 2006, makes clear that the nullity at the beginning of the contract can be resolved through arbitration. Therefore, this federal decision, over the determination of the Court of Appeals confirming the Resolution pronounced by the First Instance Court, is that the law of the case changes. The co-defendants request, based on this decision, that the current lawsuit must be overruled for lack of jurisdiction over this issue, since it is the arbitror to whom it belongs at first instance to determine the validity of the contract either by annulment or by nullity *ab initio*.

Let us see what our code of laws disposes regarding the lack of jurisdiction over the issue and the doctrine of the law of the case.

**A. Jurisdiction Over the Issue**

The Supreme Court has expressed, regarding the lack of jurisdiction over the issue that the courts as a general rule, "have the unavoidable duty to examine its own jurisdiction (and that the ) appeals courts, also, must examine the authority of the court(s) from where the recourse originates. The statement of lack of jurisdiction over the issue can be done in any phase of the procedure by any one of the parties or by the court *motu propio*". López Rivera v. AFF, 89 D.P.R. 414, 419 (1963); Vázquez v. A.R.P.E., 128 D.P.R. 513, 537 (1991); Piazza Vélez v. Isla del Río, Inc., 2003 TSPR 7.

**B. Doctrine of the Law of the Case**

In our code of laws, it is generally acknowledged the rule that the determinations of an appeals court constitute the "law of the case" in all those matters considered and decided, an in general obliges the instance court as well as the one who pronounced them, if the case returns for its consideration. Now then, if the case, through the appropriate mechanisms, returns before the consideration of the appeals court and this understands that its previous determinations are in error and can cause a severe injustice, said court, can apply a different legal rule and resolve in a just manner. Srio. del Trabajo v. Tribunal Superior, 95 D.P.R. 136, 140 (1967), Don Quixote Hotel v. Tribunal Superior, 100 D.P.R. 19, 29-30 (1971); Rivera v. Insurance Co. Of P.R., 103 D.P.R. 91, 94 (1974), Candelaria v. Munc. de Ceiba, 114 D.P.R. 155 (1983). Noriega v. Gobernador, 130 D.P.R. 905, 931

(1992); Pueblo v. Lebrón Lebrón, 121 D.P.R. 154, 159 (1998); Piazza Vélez v. Isla del Río, Inc., supra. If that is not the situation, justice would be to apply the law of the case. (Ommitted quotes.) Srio. del Trabajo v. Tribunal Superior, supra.

. . . The doctrine of "the law of the case", is a necessary and convenient manifestation of the well-known principle that adjudications must have an end. Srio. del Trabajo v. Tribunal Superior, supra. Those rights and responsibilities enjoy the characteristics of finality and firmness arranged to the doctrine of the Law of the Case. They cannot be reviewed. Martínez v. Tribunal de Distrito 69 D.P.R. 552, 555 (1949); Srio. del Trabajo v. Tribunal Superior, 95 D.P.R. 136, 140 (1967); Don Quixote Hotel v. Tribunal Superior, 100 D.P.R. 19, 2930 (1971); Rivera v. Insurance Co. Of P.R., 103 D.P.R. 91, 94 (1974); Candelaria V. Mun. de Ceiba, 114

D.P.R. 155, 156157 (1983); Sánchez Rodríguez v. López Jiménez, 118 D.P.R. 701 (1987); Mgmt. Adm. Servs. Corp. V. E.L.A., 152 D.P.R. 599, 607 (2000); Piazza Vélez v. Isla del Río, Inc.

In the case of the heading of this document, this Court, based on the applicable current law had resolved that, it had jurisdiction over this issue to take care of the controversy of the current case, pronouncement that was confirmed by the Appeals Court. The Judgment of the Appeals Court is a decision with finality and firmness characteristics. Determination that puts an end to the controversy regarding the jurisdiction over the issue and constitutes the law of the case in the current lawsuit and it is not amendable. This Court has acted according to the pronouncement of the Court of Appeals.

For everything previously exposed, we declare Overruled the "Repeated Motion to Dismiss for Lack of Jurisdiction under the Federal Arbitration Act and the Opinion of the Federal Supreme Court: Buckeye Check Cashing, Inc., v. Cardegna, filed by the defendants.

WHEREFORE, we resolve: 1) OVERRULED the "Request for Determination of Facts and Additional Legal Conclusions" filed by the defendant; 2) ACADEMIC the "Request for Reconsideration for Several Reasons" filed by the defendant; 3) OVERRULED the "Repeated Motion to Dismiss for Lack of Jurisdiction Under the Federal Arbitration Act and the Opinion of the Federal Supreme Court: Buckeye Check Cashing, Inc. v. Cardegna" filed by the defendant. The pronounced Partial Summary Judgment is kept in force. The nullity *ab initio* determination of the LIMS Contract awarded among

the parties of the heading of this document is sustained. The Judgment is final and firm.

REGISTER AND NOTIFY.

In San Juan, Puerto Rico as of June 26, 2007.

/signed
GLORIA I. PEREZ MAURY
SUPERIOR JUDGE

Stamped:
CERTIFIED
GENERAL SECRETARY
GRISELDA RODRIGUEZ COLLADO
BY: (inelegible)

**COMMONWEALTH OF PUERTO RICO**
**GENERAL COURT OF JUSTICE**
**APPEALS COURT**
**SAN JUAN JURIDICAL REGION**

| | |
|---|---|
| CENTRO DE RECAUDACIÓN DE | * |
| | * CASE |
| INGRESOS MUNICIPALES | * NO. |
| | * KLAN20070 |
| | *1242 |
| | * RE: |
| | * CIVIL |
| | *APPEAL |
| VS | * |
| | * |
| ENTEC CORPORATION | * |
| | * |

* * * * * * * * * * * * * * * * * * * * * * * * * * *

ATTY. ANGEL R AJA DELGADO

PO BOX 70364
SAN JUAN PR 00936-8364

N O T I C E  O F  J U D G M E N T

THE SUBSCRIBING SECRETARY NOTIFIES YOU THAT THIS COURT HAS FILED JUDGMENT IN THE CASE IN THE HEADING OF

THIS DOCUMENT DATED APRIL 29, 2008, THAT HAS BEEN DULY REGISTERED AND FILED IN THE COURT PROCEEDINGS OF THIS CASE, WHERE YOU CAN BE INFORMED IN DETAIL THE TERMS OF THE SAME.

AND YOU BEING OR REPRESENTING THE DAMAGED PARTY BY THE JUDGMENT, OF WHICH AN APPEAL CAN BE ESTABLISHED, I ADDRESS THIS NOTICE, HAVING FILED IN THE COURT PROCEEDINGS OF THIS CASE COPY OF THE SAME DATED MAY 2, 2008.

ATTY. MARIA DEL C TABOAS COLON –
PO BOX 363507 SAN JUAN PR 00936-3507
ATTY. IGNACIO J GORRIN MALDONADO –
PO BOX 363507 SAN JUAN PR 00936-3507
ATTY. RAMON DAPENA GUERRERO –
PO BOX 70364 SAN JUAN PR 00936-8364
ATTY. VICTOR J. QUINONEZ MARTINEZ –
PO BOX 70364 SAN JUAN PR 00936-8364
ATTY. FELIX COLON MIRO –
80 RODULFO GONZALEZ STREET ADJUNTAS PR 00601
ATTY. OSVALDO CARLO LINARES – AMERICAN AIRLINES BUILDING
1509 LOPEZ LANDRON STREET SAN JUAN PR 00911
ATTY. LYDIA MARGARITA RAMOS CRUZ –
AMERICAN AIRLINES BUILDING
1509 LOPEZ LANDRON AVE SAN JUAN PR 00911
ATTY. JOSE A MALDONADO TRINIDAD –
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SAN JUAN GENERAL SECRETARY (SUP) –
PO BOX 190887 SAN JUAN PR 00919
HONORABLE ATTORNEY GENERAL
PO BOX 9020192 SAN JUAN PR 00902-0192

CONT. CASE NO. KLAN200701242

PAGE 02

ATTY. JOSE A MALDONADO TRINIDAD –
PO BOX 770 COROZAL PR 00783

IN SAN JUAN, PUERTO RICO, AS OF MAY 2, 2008

MARIA ELENA PEREZ ORTIZ

SECRETARY

/signed
BY: ENIBETH GARCIA RIVERA

AUX. SEC. COURT I.

OAT 704-1 – NOTICE OF JUDGMENT – TA

**Commonwealth of Puerto Rico**
**IN THE COURT OF APPEALS**
**SAN JUAN JURIDICAL REGION**
**PANEL I**

| | | |
|---|---|---|
| CENTRO DE RECAUDACIONES DE INGRESOS MUNICIPALES<br><br>Appellee<br><br>ENTEC CORPORATION; CONSULTA ECONOMICA Y PLANIFICACIÓN, INC., ET ALS.<br><br>Appellants | KLAN200701242 | Appeal Proceeding from the First Instance Court, San Juan Courtroom<br><br>Case No. KPE2001-2012(603) |

Panel composed by its president, Judge Rodríguez de Oronoz, Judge Ramírez Nazario and Judge Piñero González.

Piñero González, Reporting Judge

## JUDGMENT

In San Juan, Puerto Rico, as of April 29, 2008.

The current recourse is requested with the purpose of revoking the partial summary judgment pronounced by the First Instance Court, San Juan Courtroom (FIC) on December 7, 2005, notified on December 13, 2005. The FIC determined that the contract held between the parties is null *ab-initio*, and as a consequence the arbitration clause that is included in said contract is just as well inexistent.

In attention to the reasons that we subsequently expose, we dismiss the current recourse for lack of jurisdiction.

Let us see the procedural transactions that originate the case before us.

I.

On July 20, 1995 a contract was signed between the Centro de Ingresos Municipales (CRIM) and a Consortium composed of Entec Corporation (Entec), Consulta Económica y Planificación, Inc.

(CEPI), and Héctor Luis Rivas y Asociados, Inc. (HLR) collectively known as the "Consortium". The object of the contract subscribed between the parties was the development, installation and instrumentation by the Consortium of a digitalized land registry system known as "Land Information Management System" (LIMS). For the services contracted by the CRIM an obligation of payment in the amount of $56,042,352.00 was to be satisfied, while the different phases of the Project were completed.

The parties agreed that any controversy that would arise in the execution of the contract that would not be solved by the parties, would be submitted to an arbitration procedure conducted by the American Arbitration Association (AAA). According to said agreement, on September 20, 2000 the Consortium filed a request for arbitration before

the AAA by an alleged breach of contract of the CRIM relative to the payment of fees for some determined items. The CRIM filed its answer in the arbitration process on December 11, 2005.

Subsequent to that, CRIM filed for the first time a reserving argument regarding the jurisdiction of the AAA. CRIM requested on March 21, 2001, the suspension of the arbitration procedure since it understood that there was a probability that the contract was corrupted by fraud. Nevertheless, the AAA refused to halt the arbitration procedure. That is when on July 13, 2001 CRIM prepared an amended answer sustaining that the referred contract was null considering the existence of fraud in its completion. In support of its claim, CRIM sustained that accusations existed, filed before the District Federal Court for the District of Puerto Rico

against several officers of CRIM and officers of the Consortium.

Subsequently, CRIM resorted to the FIC were it alleged that subject contract was null by fraud, and at the same time, sued, among others, the entities that compose the Consortium and its officers. On September 27, 2001 CRIM requested the FIC a Preliminary Injunction, and said court determined on June 27, 2002 to halt the arbitration procedures conducted by the AAA assuming jurisdiction over the existing controversies between the parties.

Dissatisfied by the determination of the FIC the defendant, herein Appellant, resorts on July 29, 2002 to the then Circuit Court of Appeals to request a repeal of the issued Resolution. Through judgment issued on October 31, 2000 in the case KLCE200200793 the court upheld the determination of the FIC, and in synthesis resolved that "it is the

court who has the responsibility to solve the controversy regarding the validity of subject contract", sending the case to the instance court.

On June 30, 2005 CRIM requested the FIC to issue a partial summary judgment, which was pronounced by the court a *quo* on December 7, 2005, notified on December 13, of the same year. Pages 1085-1130 of the Recourse. By virtue of said judgment, the FIC determined that the LIMS contract was null *ab initio* and its arbitration clause as well.

On December 23, 2005 the Appellants filed a motion requesting determination of additional facts covered by Rule 43.3 of Civil Procedures, 32 L.P.R.A. Ap. III R. 43.3. Pages 1156-1157 of the Appendix of the Recourse. Also, on January 23, 2006 a reconsideration petition was filed where it exposed

that the summary judgment was pronounced without concluding the phase of the discovery of evidence.

It must be strongly pointed out that on January 3, 2006 CRIM resorts to the FIC to oppose the request for additional determination of facts outlined here by the Appellates. It states that the defendant has not met its obligation of notifying on a timely basis the referred to request, upon notifying it on December 27, 2005, that is four (4) days after filing it. All of the previous, without having credited a just cause for the delay. Regardless of the failure to comply of the appellates with the applicable strict compliance term, the appellees sustain that the concession of additional determination of facts do not proceed either, under the basis that the motion does not meet the substantive requirements of Rule 43.3 of Civil Procedure, *supra*. They also point out that the request for additional determination of facts does

not proceed either with the stated rule by our Supreme Court in *Andino v. Topeka, Inc.* 142 D.P.R. 933 (1997).

This being the case, on March 20, 2006 the appellate files in the FIC a motion repeating the request to overrule for lack of jurisdiction. Alleges that in light of the opinion issued by the Federal Supreme Court in *Buckeye Check Cashing, Inc., v. John Cardegna*, et al. 546 U.S. ____, 163 L. Ed. 2d 1038 (2006), it is the arbitrator the one who has the authority or jurisdiction to determine the validity or nullity of a contract that at the same time includes an arbitration clause. Pages 1134-1335 of the Appendix of the Recourse.

On June 26, 2007, notified on July 24, 2007, the FIC issues resolution, overruling the request for additional determination of facts and dismissal for lack of jurisdiction. Pages 1137-1374 of the

Appendix of the Recourse. In that resolution the FIC concluded that the request for additional determination of facts was filed within the jurisdictional term of ten (10) days, and the delay in its notification was justified. Specifically, the FIC highlighted that in the hearing held on September 28, 2006, the appellates "demonstrated before the court justifiable reasons for the late notification of the motion to the other parties". Pages 1343 of the Appendix of the Recourse.

Notwithstanding the preceding, the FIC found that the request for determination of facts "are general allegations that do not inform the court with sufficient particularity and specificity what are those facts specifically proven that were not determined by the court in its judgment and in the opinion of the defendant should be included". Pages 1346 of the Appendix to the Recourse. (Supplied emphasis.)

Agreeing with the preceding, the FIC determined that the referred motion although timely filed does meet the contents request that the forensic practice disposes as outlined by the Supreme Court in *Andino v. Topeka*, supra, therefore **it concludes that said request did not interrupt the term to request appeal.**

The Appellants appear in court before this court in the recourse before us of August 23, 2007. They explain that the FIC erred upon declaring:

> "a. as null *ab initio* the contract between the parties since said prerogative belongs to the arbitration panel of the American Arbitration Association, as contractually stipulated, and not the FIC;
>
> b. summary judgment
>
> prematurely since the
>
> discovery of evidence had not
>
> concluded;

c. as null *ab initio* the contract between the parties based exclusively in the federal judgments that deal with events that occurred after the awarding of the contract;

d. as null *ab initio* the contract between the parties through the mechanism of summary judgment because this lawsuit is a complex one full of intentional elements, mental purposes and credibility;

e. accepted through summary judgment the cause of action to lift the corporate veil;

f. granting attorneys fees to the plaintiff-appellee by understanding that there was temerity by the appearing in court because this one insisted in resolving the controversies before the arbitration procedures agreed to in the contract and of the disposition in *Buckeye*".

In its allegation opposing the recourse, the appellee from the start has requested the dismissal of the entitled case, since it exposes that we lack jurisdiction to understand and adjudicate the case.

It upholds that filing before this court has occurred outside the jurisdictional term. It expresses in support of its claim that the request for additional determination of facts that the appellants filed before the FIC was notified outside the term, and did not meet the contents request that the applicable juridical rules request. It also specifically states that inclusively the filing of the reconsideration motion was also filed late before the FIC. The appellee also states that FIC in itself, in its resolution of June 26, 2007, determined that the reconsideration request filed on January 12, 2006 by the herein appellates became academic.

Afterwards, on November 13, 2007 the appellates file a motion in which they request, that in aiding our jurisdiction, we pay attention to their statement that according to the disposition by the Federal Supreme Court in the case *Buckeye Check*

*Cashing, Inc., v. John Cardegna*, supra, we lack jurisdiction, in having it as per the arbitration court; and as a consequence that we return this controversy to the arbitration procedure.

On the other hand, the appellee opposes referred motion in aid of jurisdiction pointing out that the document is not really a request for aid, since its real objective is to obtain the remedies that the appellant has requested in his recourse. It emphasizes that if the aid request is solved the status quo is not preserved, when instead this court would be solving the merits of the argumentation of the appellates over their theory of lack of jurisdiction by the courts of Puerto Rico, according to their reading and interpretation of the case *Buckeye Check Cashing, Inc., v. John Cardegna*, supra. That's were it stems that the appellates request us to: (a) declare overruled the aid motion; and (b) that we

examine as a first issue if this court has jurisdiction to see the case, since they sustain that we do not have it because the recourse was filed late. That is, we repeat, paying attention to the pronouncement of the FIC that the request from the Appellants of additional determination of facts did not meet the substantive requirements of Rule 43.3 of Civil Procedure, *supra*, as expressed by our Supreme Court in *Andino v. Topeka*, supra. In synthesis the Appellees point out that considering that the FIC pronounced judgment on the current recourse on December 13, 2005, and taking into account that the motion under Rule 43.3 of Civil Procedure, *supra*, was not suitable, the jurisdictional term to resort to- **which was due on January 12, 2006**- was not interrupted. Therefore the filing of the title recourse of August 23, 2007 occurred past due of the jurisdictional available term.

## II.

All the courts have the duty that cannot be delegated of verifying their own jurisdiction to take care of the motion filed before them. *Vázquez v. A.R.P.E.*, 128 D.P.R. 513 (1991). Thus, the court that does not have the authority to see the motion, only has the jurisdiction to declare it that way and dismiss the case. *Caratini v. Collazo*, 158 D.P.R. 345 (2003). The lack of jurisdiction of a court is an irreparable procedural defect. Id. We have no discretion to undertake jurisdiction were there is none. *Martínez v. Junta de Planificación*, 109, D.P.R. 839 (1980); *Maldonado v. Pichardo*, 104 D.P.R. 778 (1976).

In agreement with the preceding, Rule 83 (B) of the Court of Appeals Regulations, 4 L.P.R.A. Ap. XXII-A, disposes that a party can request the dismissal of a motion for lack of jurisdiction. In the

same way, subsection (c) of referred rule indicates that we can dismiss a motion in absence of jurisdiction motu propio or by a self initiative. *Souffront Cordero v. A.A.A.*, 164 D.P.R. ____ (2005); 2005 T.S.P.R. 49, 2005 J.T.S. 56; *Vázquez v. A.R.P.E.*, 128 D.P.R. 153 (1991). All of that in view that the appeals courts does not have the discretion to undertake jurisdiction in a motion in which the law does not allow us to do so. *Souffront Cordero v A.A.A.*, supra.

Rule 53.1(c) of Civil Procedure, 32 L.P.R.A. Ap. III R. 53.1(c) disposes the jurisdictional term of thirty (30) days to file an appeals motion before this Court upon the date of filing at the court proceedings of a copy of notice of judgment. Rule 13(A) of the Rules of this Court gives way to this jurisdictional term as well. A term of a jurisdictional nature, as the appeals one, is of a fatal character. Therefore, its'

noncompliance, deprives us of jurisdiction to heed the requested motion. *Souffront Cordero v. A.A.A.*, supra.

III.

Within the civil procedures subsequent to a judgment issued by an instance court, the motion of determination of facts and additional legal conclusions is met, directed by Rule 43.3 of Civil Procedures, *supra*, and the reconsideration motion directed by Rule 47 of Civil Procedures, 32 L.P.R.A. Ap. III R. 47.

The motion sheltered by Rule 43.3 *supra*, allows a party to request to the FIC to state in writing a series of determinations of facts and additional legal conclusions to the ones used by the court. The party that requests the motion sheltered by Rule 43.3, *supra*, has a jurisdictional term of ten (10) days to file its request before the FIC. Just as

well, said party, must notify the rest of the parties in the lawsuit within the disposed term to file the motion under Rule 43.3. The term to notify the rest of the parties is one of strict compliance. The effect of the timely filing and in accordance to the procedural dispositions of Rule 43.3, *supra*, lies in paralyzing the terms to resort to an appeal before this Court. *Soc. de Gananciales v. A.F.F.*, 108 D.P.R. 644, 646 (1979). On the contrary, the noncompliance with this rule implies that the motion sheltered by Rule 43.3, *supra*, will not interrupt the term to appeal the judgment before this Court. *Szendrey v. F. Castillo Family Properties, Inc.* Opinion of January 16, 2007, 169 D.P.R. _____, 2007 T.S.P.R. 6; 2007 J.T.S. 12, to page 704; *Salvador Jiménez v. Pérez*, 153 D.P.R. 527, 533 (2001).

It is well known that Rule 43.3 of Civil Procedure, 32 L.P.R.A. Ap. III, R. 43.4, disposes that

"a motion filed by any of the parties in a lawsuit in order for the court to amend its determinations or make initial or additional determinations, **the terms that are established by Rules 47, 48 and 53 (of Civil Procedures) will be interrupted**, for all parties. These terms will run again as soon as it is filed in the court proceedings copy of the notice of the determinations and conclusions requested". (Our emphasis.)

In *Carattini v. Collazo Syst. Analysis, Inc.*, 158 D.P.R. 345, 358 (2003), the Supreme Court of Puerto Rico (SCPR), exposed that **"only a timely and well written request for additional legal determinations, is the one to interrupt the terms to file an appeal, among other resources."** (Supplied emphasis.)

In *Roldán v. Lutrón, S.M., Inc.*, as well, 151 D.P.R. 883, 890-891 (2000), the SCPR stated that:

"relating to the motion for additional determination of facts, we must remember that said mechanism, used legitimately, is addressed to obtain a justice ideal exempt from errors. Nevertheless, Rule 43.3 regarding additional determination of facts, except for its incidental effect, **cannot be used with the purpose of increasing the jurisdictional term to appeal or file a certiorari**. In its immediate adjudicative projection, its reason for being is to bring the sentencing court the opportunity to amend or correct any error made, that is, to perform accomplished justice. (Quotes left out.) Nevertheless, **a determination of facts motion, initial or additional, filed with the mere intention of extending the term for appeals, does not interrupt said term due to an illegitimate finality**". (Our emphasis.)

Pertaining to, Rule 43.3 of Civil Procedure,

*supra*, establishes the following:

> "It will not be necessary to request in writing determination of facts to the effects of an appeal, but a party motion, filed **no later than ten (10) days after having filed in the court proceedings copy of the notice of judgment**, the court can make the corresponding initial determination of facts and legal conclusions....." (Our emphasis.)

Rule 43.3 *supra*, except for its incidental effect, does not have the purpose of increasing the jurisdictional term to appear before this Court. The reason for being of this type of motion, is allow the instance court the opportunity to amend or correct any error made. **For that it is indispensable that this type of motion constitutes a proposal that exposes, with sufficient particularity and specificity, facts that the promoter considers proven based in substantial issues related to pertinent facts or material legal conclusions together with the pertinency for which the**

**same have been requested**. *Vega, et al., v. Telefónica*, 156 D.P.R. 584, 596-597 (2002); *Andino v. Topeka, Inc.*, supra to pages 939-940. The additional determination of facts motion set forward in an improper way has no interrupting effect of the term to file an appeal. *Roldán v. Lutrón*, supra.

The previously expressed juridical rule was recently reiterated by our Supreme Court in *García Hernández v. Hormigonera Mayaguezana, Inc.* 2007 T.S.P.R. 149, 172 D.P.R. _____. There it was emphasized that "in *Andino v. Topeka, Inc.* (quote left out), we resolved that for a determination of facts request to interrupt the appeals term, it is not enough for its title to express that such determinations of facts or legal are requested, but it should include an account, even if brief, of what are the facts that according to the promoter have not

been determined by the sentencing judge, when instead they should be".

IV.

Let us examine the contents of the request for additional determination of facts petitioned by the appellate before the FIC on December 23, 2005. From said document ensues that the same only included the following:

a. **That the FIC upon determining that the deposition of the co-defendant Bernardo Negrón would be taken on November 21, 2005, that demonstrated that said court was aware that the discovery had not concluded;**

b. **That the contents of the deposition taken of Mr. Negrón on November 21, 2005 is adverse to the CRIM and contrary to summary judgment pronounced on December 7, 2005;**

c. **That at the moment in which the LIMS contract was granted (July 20, 1995), the co-defendants Tommy Habibe Arias, nor Tommy Habibe**

**Vargas had pleaded guilty to any crime;**

d. **That the other co-defending[1] entities were never indicted nor convicted;**

e. **That all the "specific facts" to which the co-defendants Habibe pleaded guilty are very subsequent to the awarding of the LIMS contract;**

f. **That Mr. Eduardo Burgos at least, offered two different versions to public officials of the government agencies before adopting the last version.**

In that occasion two different legal conclusions were requested, namely: (a) that the First Circuit of the Appeals Court has resolved that the Government Version of the Facts are only biased versions of one party, and (b) that the guilty plea, that is admissible

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[1] It refers to Entec Corporation, Consulta Económica y Planificación, Inc.; Héctor Luis Rivas y Asoc., Habibe Enterprises, Inc., Active Consulting, Inc., Habibe Computer Corp., Venture Technologies Corp., Geotel, Inc., Woolpert Puerto Rico, Inc.

in a subsequent lawsuit, is not a concluding evidence of the facts.[2]

It is obvious that in any part of the request for additional legal determinations the Appellant could demonstrate that the proposed additional facts had been previously filed in court whereby said party considered them proven. Also, the proposed additional facts lack the requested specificity by the applicable juridical rule. *Andino v. Topeka*, supra; *Garcia Hernández v. Hormigonera Mayaguezana, Inc.*, supra. Take into consideration that, it is not allowable for one party to request additional facts that the court had not previously considered or weighted.

In attention to the intrinsic vice of the request for additional determination of facts talked about in

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[2] Underlined in the original.

the past, we conclude that the same did not produce the interruption of the term to resort before this court.

In light of the preceding fact, we declare **accepted** the request to deny the motion by lack of jurisdiction filed by the appellee in its document of opposition to the motion. Just as well, having no jurisdiction we lack juridical authority to take any measures regarding the aid request, or over any other matter of the case, except for declaring our lack of jurisdiction.

V.

For the reasons previously exposed, which we make part of this Judgment, we deny the current motion for lack of jurisdiction. This as a consequence to the motion requesting additional determination of facts filed before the FIC by the appellants, did not have an interrupting effect over the term to address

this court. This motion was filed on August 23, 2007, that means, late, when the available jurisdictional term to file it was due on January 23, 2006.

The Appellant is instructed to collect within 20 days, the appendixes of the motion. Said term will start upon notice of the current judgment.

Agreed and set by the Court and certified by the Secretary of the Court of Appeals.

/signed

Stamped:
MRS. MILDRED IVONNE RODRIGUEZ RIVERA
SUB-SECRETARY OF THE COURT OF APPEALS

MARIA ELENA PEREZ ORTIZ
SECRETARY OF THE COURT OF APPEALS

(initialized on all pages by the three judges of the panel)

**COMMONWEALTH OF PUERTO RICO**
**GENERAL JUSTICE COURT**
**COURT OF APPEALS**
**JURIDICAL REGION OF SAN JUAN**

CENTRO RECAUDACION DE INGRESOS MUNICIPALES

---

VS

CASE NO. KLAN20071242
RE: CIVIL APPEAL

ENTE CORPORATION

---

ATTY. ANGEL R AJA DELGADO

PO BOX 70364
SAN JUAN PR 00936-8364

NOTICE

I CERTIFY THAT IN RELATION TO THE DOCUMENT FILED ON MAY 19, 2008 REQUEST FOR RECONSIDERATION ON MAY 30, 2008 THE COURT PRONOUNCED WAS IS TRANSCRIBED AS FOLLOWS:

SEE RESOLUTION

I ALSO CERTIFY THAT TODAY I SENT THROUGH THE MAIL COPY OF THIS NOTICE TO THE FOLLOWING PERSONS AT THEIR INDICATED ADDRESSESS, HAVING FILED AT THE COURT PROCEEDINGS COPY OF THIS NOTICE.

ATTY. MARIA DEL C TABOAS COLON –
PO BOX 363507 SAN JUAN PR 00936-3507
ATTY. IGNACIO J GORRIN MALDONADO –
PO BOX 363507 SAN JUAN PR 00936-3507
ATTY. RAMON DAPENA GUERRERO –
PO BOX 70364 SAN JUAN PR 00936-8364
ATTY. VICTOR J. QUINONEZ MARTINEZ –
PO BOX 70364 SAN JUAN PR 00936-8364
ATTY. FELIX COLON MIRO –
80 RODULFO GONZALEZ STREET ADJUNTAS PR 00601
ATTY. OSVALDO CARLO LINARES – AMERICAN AIRLINES BUILDING
1509 LOPEZ LANDRON STREET SAN JUAN PR 00911
ATTY. JOSE A MALDONADO TRINIDAD –
BUFETE MERCADO & MALDONADO
PO BOX 2610 BAYAMON PR 00960
ATTY. FRANCISCO DOLZ SANCHEZ –
PO BOX 361451 SAN JUAN PR 00936-1451
ATTY. FRANCISCO SANTIAGO VELA –
PO BOX 9024226 SAN JUAN PR 00902-4226
ATTY. RAMON DAPENA GUERRERO –
PO BOX 70364 SAN JUAN PR 00936-8364
ATTY. JOSE A MALDONADO TRINIDAD
PO BOX 770 COROZAL PR 00783

CONT CASE NO. KLAN200701242

PAGE 02

SAN JUAN, PUERTO RICO, ON JUNE 5, 2008.

MARIA ELENA PEREZ ORTIZ

SECRETARY

/initialized

BY: VERÓNICA ROSADO LORA

SECRETARY ROOM SERV

OAT – 750-1
NOTICE OF RESOLUTION AND ORDERS
COURT OF APPEALS

**COMMONWEALTH OF PUERTO RICO**
**COURT OF APPEALS**
**SAN JUAN JURIDICAL REGION**

| | | |
|---|---|---|
| CENTRO DE RECAUDACIONES DE INGRESOS MUNICIPALES (CRIM)<br><br>Appellee<br><br>ENTEC CORPORATION; CONSULTA ECONOMICA Y PLANIFICACIÓN, INC., ET ALS.<br><br>Appellants | KLAN0701242 | APPEAL Proceeding from the First Instance Court, San Juan Superior Courtroom<br><br>Case No. KPE2001-2012(603) |

Panel composed by its president, Judge Rodríguez de Oronoz, Judge Ramírez Nazario and Judge Piñero González.

**RESOLUTION**

In San Juan, Puerto Rico, on May 30, 2008.

The request for reconsideration is OVERRULED.

Agreed and sent by the Court and certified by the Secretary of the Court of Appeals.

/signed
MARIA ELENA PEREZ ORTIZ
SECRETARY OF THE COURT OF APPEALS

(initialized in the margin by all three judges of the panel)

**COMMONWEALTH OF PUERTO RICO**
**GENERAL JUSTICE COURT**
**SUPREME COURT**

CENTRO DE RECAUDACION DE INGRESOS MUNICIPALES — RECURRED

VS.

ENTEC CORPORATION AND OTHERS — PETITIONER

CASE: AC-2008-0041 ORIG.CASE: KPE2001-20120 CIVIL APPEALS
CIR. CASE: KLAN2007-1242 ----------
CIVIL ACTION OR MISDEMEANOR

DAPENA GUERRERO RAMON E
PO BOX 70364
SAN JUAN PR 00936-0364

AMENDED NOTICE
---

I CERTIFY THAT IN RELATION TO THE APPEALS REQUEST THE COURT PRONOUNCED THE ACCOMPANYING RESOLUTION:

AJA DELGADO, ANGEL R. (ATTY.)
PO BOX 70364
SAN JUAN, PR 00936-8364
COLON MIRO FELIX A (ATTY.)
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000000732
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P.O.BOX 9560-BAYAMON, PR
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QUINONES, VICTOR J. (ATTY.)
P.O. BOX 70364-SAN JUAN PR
00936-8364
RAMOS CRUZ, LYDIA M. (ATTY.)
AMERICAN AIRLINES BLDG.-1509 LOPEZ
LANDRON AVE., PH
SAN JUAN, PR 00911
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PO BOX 770-COROZAL PR
00783
SANTIAGO VELA, FRANCISCO ATTY.
PO BOX 9024226-SAN JUAN PR
00902

SAN JUAN , PUERTO RICO ON DECEMBER 4, 2008

ATTY. AIDA I. OQUENDO GRAULAU

---

SECRETARY TO THE SUPREME COURT

(initialized)
MARIA ELENA SALAS GONZALEZ

---

ASSISTANT SECRETARY

IN THE SUPREME COURT OF PUERTO RICO

SPECIAL
ROOM MERGE | No._____

ORDER

San Juan, Puerto Rico, as of November 26, 2008.

Due to the inhibition of Associate Judge Mrs. Rodríguez Rodríguez, a Special Room has been made up composed by the

Presiding Judge Mr. Hernández Denton, the Associate Judge Mr. Rivera Pérez and Associate Judge Mrs. Fiol Matta, to figure out case No. AC-2008-041, Centro de Recaudación de Ingresos Municipales ("CRIM") v. Entec Corporation, Consulta Económica y Planificación, Inc., and Others.

Decided and signed.

Federico Hernández Denton

Presiding Judge

CERTIFIED:

Dimarie Alicea Lozada
Interim Secretary of the Supreme Court

(Stamped on the margin by the seal of the court)

**IN THE SUPREME COURT OF PUERTO RICO**

| | | |
|---|---|---|
| Centro de Recaudación de Ingresos Municipales ("CRIM")<br><br>Appellee<br><br>Vs.<br><br>Entec Corporation, Consulta Económica y Planificación, Inc., and Others<br><br>Appellants | No. AC-2008-041 | |

Special Room composed of the Presiding Judge Mr. Hernández Denton, Associate Judge Mr. Rivera Pérez and Associate Judge Mrs. Fiol Matta.

RESOLUTION

San Juan, Puerto Rico, as of November 26, 2008.

Having accepted the written document filed as a certiorari

petition, because it is the adequate resource, the same is overruled.

The Court has agreed and the Interim Supreme Court Secretary certifies it.

/signed

Dimarie Alicea Lozada
Interim Secretary of the Supreme Court

(Stamped on the margin by the seal of the court)

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF SAN JUAN PART

PAGE. 01

CRIM

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PLAINTIFF

CASE NO. K PE2001-2012
Vs. ROOM: 0907

ENTEC CORPORATION

SPECIAL PROCEDURES

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DEFENDANT GROUNDS OR FELONY

ATTY. CARTAGENA SANTIAGO EDGARDO
PO BOX 70368
SAN JUAN, PR 00936-8364

N O T I F I C A T I O N

I CERTIFY THAT IN RELATION TO THE CASE IN REFERENCE--------ON JUNE 27, 2002,

THE COURT ISSUED A RESOLUTION --------- THAT TRANSCRIBES AS FOLLOWS:

ENCLOSURE: TRANSCRIBED RESOLUTION

SIGNED: SONIA I. VELEZ COLON
JUDGE

I ALSO CERTIFY THAT ON THIS DAY, COPY OF THIS NOTIFICATION HAS BEEN SENT THROUGH THE MAIL TO THE FOLLOWING PERSONS AND THEIR CORRESPONDING ADDRESSES, HAVING FILED IN WRIT ON THIS SAME DATE, COPY OF THIS NOTIFICATION.

DAPENA GUERRERO RAMON E.
GOLDMAN ANTONETTI & CORDOVA, PSC
PO BOX 70364
SAN JUAN PR
00936-8364

TABOAS COLON MARIA DEL C
PO BOX 363507
SAN JUAN PR
00936-3507

PAGE. 02

CASE NO. K PE2001-2012

ROOM: 0907

COLON MIRO FELIX A
1925 AVE LAS AMERICAS
PONCE PR
00728-1815

MALDONADO TRINIDAD JOSE A
PO BOX 770
COROZAL PR
00783-0770

RAMOS CRUZ LIDIA MARGARITA
AMERICAN AIRLINES BUILDING
1509 LOPEZ LANDRON – PENTHOUSE
SAN JUAN PR 00911

MR. CARLOS SERRA, MARIA L DIAZ & SLG
HC 04 BOX 5906
COROZAL PR
00783

SAN JUAN, PUERTO RICO, ON JUNE 28, 2002

CARMEN L. LOPEZ CRUZ

---

SECRETARY

BY: BRENDA HERNÁNDEZ (/initialized)

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ASSISTANT SECRETARY

.A.T.750-NOTIFICATION OF ORDERS AND RESOLUTIONS

**The Commonwealth of Puerto Rico**

| | |
|---|---|
| Centro de Recaudación de Ingresos Municipales-CRIM (Center for the Collection of Municipal Income)<br><br>Plaintiff<br><br>V.<br><br>Entec Corporation, Etc.<br><br>Defendants | CIVIL No. KPE 01-2012<br>Room 907<br><br>Regarding<br><br>PRELIMINARY INJUNCTION, PERMANENT, ETC. |

## RESOLUTION

I

It is necessary to evaluate in the records of the case, if the needed elements concur to use our good judgment in the issuance of the requested interdiction solution, with the purpose of halting

certain arbitration procedures taking place in the City of New York before the American Arbitration Association (AAA).[1]

Said procedures result from a sales contract of equipment and services agreed to between petitioner, Centro de Recaudación de Ingresos Municipales (CRIM) (Center for the Collection of Municipal Income) and the Defendant, composed of several companies and their representatives. The Plaintiff claims the nullity of such business agreement as the

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[1] We hereby proceed to consider the determinations reached by the Circuit Court of Appeals by its Sentence of January 23, 2002, which rules the return of the current case to this Court so that we act in conformity. Through this ruling, as is known, said Court orders – after paying attention to the procedural considerations related to the summons – the execution of evidentiary hearing the Court of Appeals was fundamentally based upon the nature of the known issues that the case is invested with, therefore they should be considered as true, as prescribed by the regulations that accompanies the overruling petition which the instance court had, prevented him from denying the observance of the corresponding adjudicative hearing for the elucidation of the petitioned motion in the merits of the case.

essential basis for the need and origin of the peremptory course of action requested. The Defendants oppose such claim, while the companies herein included, claim for the continuation of said arbitration procedure expecting that the amounts, as adduced, that the CRIM owes them for services rendered as contracted, be satisfied. The central point of said contract, agreed to between the parties on July 25, 1995, is the digitalization of the land registry known as Land Information Management Systems, also known by it's acronym, LIMS.[2]

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[2] The entries which to that ends are claimed in the arbitration by the co-defendants are the following: (a) $2,241,685.78, net from the retained, for work allegedly performed during the months of June, 1999 to February, 2000; (b) interests over the due amounts of December, 1999, henceforth; (c) $1,626,186.16 for maintenance services of November 1, 1999, henceforth; (c) $1,626,186.16 for maintenance services of November 1, 1997, henceforth; (c) $1,626,186.16 for maintenance services of November 1, 1997 to March 1, 2002; (d) the interests of the due amounts beginning with November, 1997; (e) $6,699,578.00 of work for alleged changes in the specifications of the project; (f) $5,000,000.00 for damages for breach of contract and loss of earnings not gained and damages for libel in excess of $5,000,000.00.

By virtue of the claim in this petition the appeals court has requested us to interpret, as part of the previous endeavor, "...if the intention of both parties at the time of agreeing to arbitration, also included, awarding any controversy that would surface regarding the legality and validity of the contract subject of the controversy". See, Sentence, supra, to Page 41.

The corresponding court hearing was held and as our first deliberation, we paid attention to the issues regarding summons, and the evaluation of those issues that were not yet under our jurisdiction. In conformity with that, the legal representation of the Plaintiff, Attorney María del Carmen Taboas, indicated to the Court that at least all parties whose presence is essential in awarding the interdictal remedy, had been duly summoned. All parties agreed that the same is addressed to Entec

Corporation, ENTEC, Consulta Económica y Planificación, CEPI, and Tommy Habibe Arias, whom are subject to the Court's jurisdiction.

Surmounted the aforegoing issues, and other related[3] considerations pertaining to the legal

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[3] As part of the events taken place in the aforementioned procedure, the plaintiff requested the Court to file a contempt of court for the co-defendants, Eduardo Burgos Lebrón, Mildred Suazo de Burgos and Wanda Rodríguez Hernández; petition which afterwards, after crediting by the petitioner the corresponding evidence that justified the referred to annotation, was granted. See, Court Order of May 20, 2002 and Order of June 4, 2002. Other petitions with identical purposes were filed against Mr. Tommy Habibe Arias; Consulta Económica y Planificación (CEPI); ENTEC and; Héctor Luis Rivas y Asociados; just the same against Mr. Bernardo Negrón and his wife. Nevertheless, said claims never advanced whereas said persons had already made the corresponding allegations that prevented the imposition of the desired measure. See, Court Order of May 23, 2000,(which acknowledges the existence of an answer by Mr. Negrón); and the Motion filed by the plaintiff of May 20, 2002, (in which it alerts the subscribing Judge, that Mr. Tommy Habibe Arias, et al., had already replied through a written answer, after the Judge, Hon. Rita L. Prutzel Gonzalez denied the request for contempt of court interposed against them).

It should be pointed out that while these processes occurred, we were informed of a request to claim the benefit of the federal Bankruptcy Law by the co-defendants Margarita Sanfeliz Wu and her husband, Benjamin Wu, which gave way to a decree by this court, through partial judgment of April 29, 2002, with which we ordered the corresponding halting of the procedures regarding said respondents.

process evaluated, we begin to discuss thoroughly the details of the case. To that effect, Plaintiff upholds the position that the Court has to decide *prima facie* if the contract in dispute is invalid. Only in the event that an adverse determination is reached, would the Court have to decide in relation to the arbitration clause. The Defendants declared, as opposed to what the Plaintiff suggests, that the present claim has an appropriate solution that stems from the arbitrary contract that binds the parties, therefore the Plaintiff is overruled in requesting this procedure. Therefore, only the arbitration clause would be taken care of; issue that corresponds exclusively to the panel of arbitrators whom have already been selected and are in office.

Regarding the adjudicative approach, the Plaintiff claims that the requested solution could be taken care of based on the documents presented and

by way of the admission of guilt from members who are part of the Defendants in a series of criminal cases that are currently being discussed in the Federal Court.[4] The Defendant rejected the Plaintiff's previous argument that the case is ready for adjudication with the documents that at that moment were recorded.

**We granted the parties simultaneous terms to expand the arguments and the determination of facts so that we could be in the position of properly evaluating the legal basis or not of the motion.**

The Plaintiff presented its corresponding document and established as fundamental facts for the determination of cause, the admittance of guilt by the Defendants in their position as public officials

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[4]From the previous, the plaintiff excluded, at that moment, the allegation relating to the five percent (5%) deduction from the collections of CRIM –whose illegality is charged to those recurred to—to finance the referred-to land registry digitalization project –LIMS- to whom the preparation of the contract which concerns us, obeyed to. That being so, since such contention requires the filing of the corresponding evidence, which it would do so at the adequate moment.

or intermediaries, for felony in several pending cases in the Federal District Court for the Commonwealth of Puerto Rico related to acts associated with the referenced contract and whose evidence derives from the official documents which for such purpose came together as attachments of the same; as follows:

> In our about June, 1994, and continuing through in or about March, 2000, in the District of Puerto Rico and elsewhere, defendant Eduardo Burgos Lebrón, while serving as the Executive Director of Centro de Recaudaciones de Ingresos Municipales (hereinafter the CRIM), participated in a conspiracy with Bernardo Negrón Montalvo, Margarita Sanfeliz Wu, Tommy R. Habibe, Sr. , Tommy O. Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, a/k/a "Jacko", Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Carlos Serra Vélez, Benjamin Wu, Haydeé Figueroa Guzmán, and José Rafael Vázquez, and others, to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm, in violation of Title 18, United States Code, Sec.1951.

Further on, it is highlighted that:

Defendant Burgos Lebrón requested and received these sums of monies or third party services, in exchange for him assisting in approval of the contract for the LIMS project and for his approval and authorization of payment vouchers in relation to the LIMS project. (...)monies...totaling approximately $238,500.00 from in or about September, 1995 through in or about July, 1999.

As part of the conspiracy, defendant Burgos Lebrón received third party services from codefendant Hector Luis Rivas Colon in or about 1995. Co-defendant Héctor Rivas Colón made arrangements with co-defendant Guillermo Colón Santos, a construction contractor, to build an enclosed gazebo at the home of defendant Burgos Lebrón in Los Paseos, Río Piedras, Puerto Rico. The gazebo was built to facilitate Burgos's help to the consortium of companies which were awarded the LIMS contract with any problems they might face in the request for payments or otherwise. The consortium of companies were operated by co-defendant Hector Rivas Colon, Tommy O. Habibe Vargas, Tommy R. Habibe Arias, John P. Stephens Rexach and others. The cost of the gazebo was approximately $10,000.00.

Between in or about September, 1995, and continuing to in or about July, 1999, defendant Burgos Lebrón also requested and received numerous cash and check payments for his benefit, political purposes, and/or others from co-dendants Tommy O. Habibe Vargas, Tommy R. Habibe Arias, and/or

Hector Rivas Colon. Defendant Burgos Lebrón received cash payments totaling approximately $228,500.00.

During the prosecution period, defendant Burgos Lebrón shared a portion of the money with co-defendant Cándida Rodríguez Larrendowtte, the CRIM's Assistant Director, and co-defendant Wanda Rodríguez Hernández were aware that the money provided by defendant Burgos Lebrón was proceeds paid by co-defendants Tommy O. Habibe Vargas, Tommy Habibe Arias, and/or Hector Luis Rivas. Defendant Burgos Lebrón made numerous cash payments to co-defendants Candida Rodriguez Larrendowtte and Wanda Rodríguez Hernández in amounts ranging from $2,000.00 to $25,000.00. Between in or about October, 1995, and continuing to through or about August, 1998, defendant Burgos Lebrón paid over to co-defendant Cándida Rodríguez Larrendowtte approximately $71,000.00 and to co-defendant Wanda Rodríguez Hernández approximately $20,000.00. During the prosecution period, defendant Eduardo Burgos Lebrón received and used some of the cash payments from co-defendants Tommy R. Habibe Arias to pay for personal expenses. In addition, Eduardo Burgos Lebrón received and used some of the cash payments from co-defendant Tommy R. Habibe Arias to purchase a boat and to pay political contributions.

In or about October, 1997, defendant Burgos Lebrón requested and received a payment totaling $49,000.00 from co-

defendant Tommy R. Habibe Arias to purchase from a third party a 1997 Carver 260 motor boat that was valued at $59,995.00. Defendant Burgos Lebrón requested that the third party register the 1997 Carver 260 motor in the name of co-defendant Wanda Rodríguez Hernández.

In or about December, 1997, co-defendant Tommy R. Habibe Arias transferred an existing checking account at Banco Santander de Puerto Rico, San Juan, Puerto Rico, to a third party. Defendant Burgos Lebrón and co-defendant Cándida Rodríguez Larrendowtte designated the third party. Co-defendant Tommy R. Habibe Arias had deposited money into the account to be used by defendant Burgos Lebrón and co-defendant Rodríguez Larrendowtte. From in or about November, 1997, and continuing through it in or about May, 1999, the third party made cash withdrawals of approximately $37,500.00, and provided the cash to defendant Burgos Lebrón, who in return used part of the cash for political contributions to the New Progressive Party.

See, Plea Agreement with Mr. Eduardo Burgos Lebrón and Government's version of the facts, incorporated into the aforementioned agreement.

Mrs. Margarita Sanfeliz Wu, acted as consultant to the CRIM, as per contract, in which she

had to provide all the necessary technical assistance in the development of the LIMS project, and in particular, to prepare the document, "Request for Proposal" in which it was established the criteria that would be taken into consideration for selecting the entity to whom the project would be assigned. Mrs. Margarita Sanfeliz Wu, on February 14, 2002, before Federal Judge Salvador Casellas, pleaded guilty, on two felony charges in the case of **U.S. v. Bernardo Negrón**, supra. Charge number one (1) consists of conspiracy to interfere with commerce through extortion for economic fear and/or conspiracy to interfere with commerce through extortion for economic fear under color of official authority; the second charge, number seventeen (17), the indictment against her in the referred case; conspiracy to launder money.

With such declaration, as is the same with Mr. Burgos Lebrón, the fact that on or about June 1994, and throughout on or about March, 2000, while occupying mentioned position, conspired with the co-defendants to have an impact on the commerce and interstate movement of articles, through extortion by authority and fear of economic harm in violation of Title 18, USC, Sec. 1951.

It is added, specifically, to this respect in the "Plea and Cooperation Agreement, between Mrs. Sanfeliz and the Federal Prosecutor's Office that:

> Essentially, on or about July 29, 1994, defendant, Margarita Sanfeliz Wu, was hired as a consultant to the LIMS project by the Executive Director of CRIM Eduardo Burgos Lebrón pursuant to instructions of co-defendant Bernardo Negrón Montalvo. After being hired, defendant Sanfeliz Wu met in Washington, D.C. with co-defendant Habibe, Jr., in order to discuss the LIMS project and requested and received from Habibe Jr., a sample request for proposal for the LIMS project which would ensure that the CONSORTIUM formed by co-defendants,

complied with the requirements for the LIMS project.

Once the proposal were submitted, defendant Sanfeliz Wu provided the members of the Evaluation Committee an RFP (Request for Proposal) that was based on information provided by co-defendant Habibe Jr. Defendant Sanfeliz Wu also proceeded to provide defendant Habibe, Jr., with a copy of the competitor/s proposal for his evaluation. Defendant Sanfeliz Wu, then prepared and submitted a report to the Board of Directors of the CRIM which recommended the proposal submitted by the CONSORTIUM, this report was prepared using the evaluation performed by co-defendant Habibe, Jr. On July 18, 1995, defendant Sanfeliz Wu provided the Board of Directors of the CRIM a favorable analysis of the terms and conditions of the contract causing the award of the $56,000,000.00 LIMS contract to the CONSORTIUM.

Throughout this period of time, defendant Sanfeliz Wu would request and received sums of monies from co-defendants Tommy O. Habibe Vargas and Tommy R. Habibe Arias, Hector Luis Rivas and John P. Stephens who at the time were contractors working for CRIM in a system known as LIMS, in exchange for defendant Sanfeliz

recommending their group for the project and once awarded the contract for her recommending the approval and authorization of the payment vouchers for the LIMS project. Because of fear of economic harm approximately $484,118.94 was paid by the co-defendant to Margarita Sanfeliz Wu and her husband co-defendant Benjamin Wu. All in violation of Title 18, United States Code, Sec.1951.

In or about October, 1995, and continuing through on or About March, 2000, in the District of Puerto Rico and elsewhere within the jurisdiction of this Court, defendant, Margarita Sanfeliz Wu, while serving as the advisor to the Board of Directors of CRIM, participated in a conspiracy with co-defendants, Bernardo Negrón Montalvo, Tommy R. Habibe Arias, Tommy O. Habibe Vargas, Eduardo Burgos Lebrón, Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Benjamin Wu, and Roberto Roca Buigas, to knowingly and willfully conduct financial transactions knowing that the proceeds involved in the financial transactions involved proceeds of some form of unlawful activity, knowing that

the transactions are designed, in whole or in part, to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the specified unlawful activity, to wit violations of Title 18, United States Code, Sec.1951.

Essentially, defendant Margarita Sanfeliz Wu, received numerous cash payments from co-defendants, Tommy O. Habibe Vargas, Tommy R. Habibe Arias, Hector Luis Rivas Colon, John P. Stephens and Roberto Roca Buigas money which he used for her personal benefit and which she share with her husband co-defendant Benjamin Wu. As part of the method by which defendant Sanfeliz Wu would received the money a fake and fraudulent contract for professional services was issued between co-defendants Habibe, jr., and Benjamin Wu, defendant Benjamin Wu would submit fake and fraudulent invoices to co-defendant Habibe, Jr., using the name of Urbanística LTD., and then a check would be issued from Habibe, Jr. to Urbanística LTD, which defendant Sanfeliz Wu would deposit into an account of her control. In addition following instructions of defendant Sanfeliz Wu, Habibe Jr., would issue checks directly to co-defendant Benjamin Wu. All in violations of Title 18, United States Code, Sec. 1956(h).

The money which Margarita Sanfeliz Wu received was used by her for the payment of personal expenses, particularly Sanfeliz Wu used a sum of money for the purchase of a home in Virginia which she later sold. In

> total, defendant Sanfeliz Wu and her husband co-defendant Benjamin Wu received in checks and cash approximately $484,118.94 pursuant to Title 18, United States Code, Section 982(a). See, Plea Agreement with Mrs. Margarita Sanfeliz Wu and Government's version of the facts, incorporated to the aforementioned agreement.

Carlos Serra Vélez, was member of the Board of Directors of the CRIM from 1993 until 2002 and of the Price Negotiating Committee of the LIMS contract, together with Bernardo Negrón, President of the Board of Directors of the CRIM. He pleaded guilty to criminal offense number one (1) of the indictment in the case U.S. v. Bernardo Negrón, supra, serious offense, consisting of conspiracy to interfere with interstate commerce by extortion inducing consent for fear of economic harm and/or by color of official authority in violation of the Hobbs Act, 18 U.S.C., sec.19519(a).

With such statement, admitted—which would have been proven by the Government if it had been a trial by jury, as with the aforementioned defendants--the fact that on or before June, 1994 throughout on or before March, 2000, while occupying the aforementioned position, conspired with the co-defendants to harm the interstate commerce and movement of articles through extortion by color of authority and fear of economic harm in violation of Title 18, United States Code, Sec.1951.

In particular, it was admitted the following would have been proven:

> Essentially, Tommy Habibe Vargas would receive request for sums of money, from Eduardo Burgos Lebrón, Bernardo Negrón Montalvo, and Carlos Serra whom at the time were the Executive Director and president and a member of the Board of Directors of CRIM respectively, as well as members of the evaluating committee of the LIMS project.
>
> On or about the dates listed below, the defendant Carlos Serra received the following payments in the amounts specified below, in

consideration of the award of the LIMS project to the CONSORTIUM:

.. On or about January 19, 1996, defendant Carlos Serra received from co-defendant Hector Rivas a trip to Cuba.

On or about July 3, 1996, defendant Carlos Serra received from co-defendant Habibe, Sr., two $1,000.00 checks as ad donation to his political committee, Serra's 96.

On or about August 26, 1997, defendant Carlos Serra received from co-defendant Hector Rivas a $500.00 check made payable to 'Comité PNP Corozal'.

On or about May 8, 1998, defendant Carlos Serra received from co-defendant Habibe, Sr., two $500.00 checks made payable to 'Comité Amigos Carlos Serra'. All in violation of Title 18, United States Code, Section 1951(a).

See, Plea Agreement with Mr. Carlos Serra Vélez and Government's version of the facts, incorporated to the aforementioned agreement.

Mr. Bernardo Negrón Montalvo was President of the Board of Directors of the CRIM from 1993 to November 1998, after which he was named to said Board as and ad hoc member, without vote but with voice, through a revision to the Regulations by the Advisor to the Board, Mrs. Sanfeliz Wu, which

mentioned revision was approved by the referred governing board. Mr. Negrón Montalvo pleaded guilty on April 24, 2002, of charges numbers 1, 18 and 26 of the charges made against him in the case U.S. v. Bernardo Negrón. Charges 1 and 18, serious crimes, are the same charges to which Mr. Eduardo Burgos pleaded guilty to.

With such statement, he admitted, which would have been proved by the Government if it had been a trial by jury, as with the aforementioned defendants---the fact that on or before June, 1994, throughout on or before March 2000, conspired with the co-defendants to harm the interstate commerce and movement of articles through extortion by color of authority and fear of economic harm in violation of Title 18, United States Code, Sec.1951.

In particular, it was admitted the following would have been proven:

Essentially, sometime prior to June 1994, defendant Bernardo Negrón Montalvo met with contractor Nelson Soto and agreed that the CRIM's LIMS project would be awarded to Nelson Soto and his group. At the time defendant Bernardo Negrón Montalvo was the mayor of the municipality of Villalba and the President of the Board of Directors of the CRIM.

On or about July 1994, defendant Negrón Montalvo introduced co-defendant Margarita Sanfeliz Wu to Eduardo Burgos Lebrón, then Director of the CRIM and informed him that she was going to be hired as a consultant to the LIMS project for CRIM.

On or about May 1995 and following instructions of defendant Bernardo Negrón Montalvo defendant Margarita Sanfeliz Wu recommenced to the negotiating committee of CRIM that the LIMS project be awarded to the group composed by Nelson Soto, Héctor Rivas, Tommy O. Habibe Vargas, Tommy R. Habibe Arias and John P. Stephens, also known as the Consortium.

Mentioned defendant received payments in relation to granting the development of the LIMS project to the Consortium, as part of the conspiracy, amounting to $119,393,85, which were made by Mr.

Héctor L. Rivas, Nelson Soto, Tommy Habibe, Sr., and Tommy O. Habibe, Jr.

Of the aforementioned payments, the $25,000.00 cash payment received by Mr. Negrón from Tommy R. Habibe on March 10, 2000 stands out, since he was no longer President of the Board of Directors, and did not have the power to exercise vote in the same. See, Plea Agreement with Mr. Bernardo Negrón Montalvo and the Government's version of the facts, incorporated to the aforementioned agreement.

Benjamin Wu, husband of co-defendant, Margarita Sanfeliz. He pleaded guilty of perjury charges for having lied to the Grand Jury. That being so, upon testifying before such body that he had signed a contract with CEPI when in truth "....did not have a legitimate contract with CEPI and the payments received by him were payments made

to disguise kickback payments for his wife, defendant Sanfeliz Wu, pursuant to the request of defendant Sanfeliz Wu. All of this was conducted in violation of Title 18, United States Code, Section 1623". See, Plea Agreement with Mr. Benjamin Wu and the Government's version of the facts, incorporated to the aforementioned agreement.

Tommy Habibe Arias, member of the Consortium to whom the development of the project LIMS was awarded, pleaded guilty in relation to charges numbers 1 and 18 of the charges in the case of U.S. v. Bernardo Negrón, supra; are the same charges to which Mr. Burgos Lebrón pleaded guilty.

With such statement, admitted, like the aforementioned defendants, the fact that on or about June 1994, throughout on or about March 2000, while occupying mentioned position, conspired with the co-defendants to harm interstate commerce and

movement of articles through extortion by color of authority and fear of economic harm in violation of Title 18, United States Code, Sec.1951.

Likewise, he admitted the following in relation to the referred case:

> On or about September 22, 1995, defendant HABIBE ARIAS started to receive demands for payments from co-defendant Bernardo Negrón, then president and/or member of the Board of Directors of CRIM. These demands were in the form of solicitations of contributions from defendant's NEGRON political campaign for mayor of Villalba. They were also demands for payments of debts owed by his political campaign. In his demands to defendant HABIBE ARIAS, NEGRON made it clear that he had the authority to stop the payments of the LIMS contract as well as to terminate or cancel the contract. From September 22, 1995 to March 10, 2000, defendant HABIBE ARIAS paid co-defendant NEGRON, approximately $41,416.00.
>
> On or about October, 1995, defendant HABIBE ARIAS started to receive demands for payments from co-defendant BURGOS LEBRON. These demands were received by HABIBE ARIAS when he visited BURGOS LEBRON at his office in Puerta de Tierra. As

the Executive Director of CRIM, defendant BURGOS LEBRON would request different sums of monies from HABIBE ARIAS in order to expedite the payment process of the LIMS project and to approve pending change orders related to the LIMS project. Most of the time defendant BURGOS LEBRON would write the desired amount of money on a little "post it note" and give the note to defendant HABIBE ARIAS. If HABIBE ARIAS wanted to receive the payments due for work performed and/or pending authorizations of change orders he had to comply with BURGOS' demands. From October 1995 continuing to July, 1999, defendant HABIBE ARIAS paid Burgos in cash, check and goods approximately $208,500.00

On or about July 3, 1996 defendant HABIBE ARIAS received a request from then member of the CRIM Board of Directors, defendant SERRA, for political contribution to his re-election campaign for Mayor of Corozal. When the request was made for the contribution, defendant SERRA reminded defendant HABIBE ARIAS that he was a member of the Board of Directors of CRIM and he had the power to stall the LIMS contract and make life difficult for HABIBE ARIAS in the performance of the contract. From July 1996 to May 1998 defendant gave co-defendant SERRA approximately $4,000.00.

On or about July 30, 1996, defendant HABIBE ARIAS started to receive demands for payments from co-defendant SANFELIZ WU, then the advisor to the Board of Directors

> of the LIMS contract, in exchange for her continuous help and support to the CONSORTIUM. Defendant SANFELIZ WU, reviewed all invoices and change orders submitted by HABIBE ARIAS and without her approval CRIM would not pay out any sum of money to the CONSORTIUM. From July 1996 through November, 1997, defendant HABIBE ARIAS paid co-defendant SANFELIZ WU through BENJAMIN WU approximately $274,118.94.
>
> On or about December, 1996, defendant HABIBE ARIAS paid co-defendant RODRIGUEZ LARRENDOWTTE, then Assistant Director of the CRIM, a Christmas bonus of $5,000.00 for her continuous help and assistance in all matters related to the LIMS payments. See, Plea and Cooperation Agreement, Mr. Tommy Habibe Arias and the Government's version of the facts, incorporated to aforementioned agreement.

Tommy Habibe Vargas, was President and owner of the corporation, ENTEC. On April 25, 2002, he pleaded guilty to charge number one (1) of the charges against him in the case U.S. v. Bernardo Negrón, et al., supra, for which Messrs. Tommy Habibe Arias and Mr. Eduardo Burgos pleaded guilty.

With such statement, he admitted, like the aforementioned defendants, the fact that on or about June, 1994, throughout on or about March, 2000, while occupying mentioned position, he conspired together with the co-defendants to harm the interstate commerce and movement of articles through extorsion under color of authority and fear of economic damage in violation of Title 18, United States Code, Sec. 1951

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3) that Mr. Negrón since June 1994 conspired with Mr. Nelson Soto, by then, principal of CEPI so that the project would be awarded to the latter, as member of the Consortium in record. That once Mrs. Margarita Sanfeliz would be hired by the Executive Director of the CRIM, as requested by Mr. Negrón on July 1994; she, on May 1995, again by instructions of

the referenced Mr. Negrón, recommended the CRIM to award the contract to the group composed by Mr. Nelson Soto, Héctor Rivas, Tommy Habibe, Jr., Tommy R. Habibe Arias, principals of ENTEC, CEPI AND HLRA;

4) that Mr. Negrón as well as Mr. Carlos Serra Vélez, as members of the Board of Directors of the CRIM, as well as Mr. Burgos and Mrs. Margarita Sanfeliz, in their official functions of the CRIM, requested, and in conformity received, payments by the co-defendants to make sure that the Consortium to which they belonged, would be awarded the contract at hand, monies which would essentially be made, once such entity would start to receive income by the CRIM.

5) that Messrs. Habibe Arias and Habibe Vargas were not victims of extortion, due to the fact that

they participated in a conspiracy that started prior to the formality of the contract in record, duly admitted by them through their corresponding guilty statements, with which they solicited and helped in the referred to requests for payments of Messrs. Burgos, Negrón, Serra and Margarita Sanfeliz as planned and in common agreement by all.

**II**

All of the aforementioned shows, as understood by the Plaintiff, clear proceedings that have an effect in the creation of the contract that concerns us, and that due to its evident illegality, and as opposed to the laws, moral and public order, Article 4 of the Puerto Rico Civil Code, 31 L.P.R.A., sec. 4., and as admitted by the federal authorities and by the defendants through their guilty statements, nullifies said contract ab initio, and therefore makes it inexistent, without the right of

the parties to make any claims or rights from that moment on. Adding to the previous conclusion, in conformity with the opinion of the Plaintiff, additional violations to legal and regulatory provisions that govern the contracting of mentioned public entity and the above mentioned co-defendants as officers of the same, did not observe in the present case, as follows; violation to Article 22 of the Organic Law of the CRIM, Law No. 80 of August 30, 1991, 21 L.P.R.A. sec., when retaining monies from the remittance of funds to the municipalities in a consecutive manner during fiscal years 1996-97, 1997-98, 1998-99 and 1999-2000, to defray the cost of financing the LIMS project, when adding the deductions assigned to the operational expenses of the CRIM, exceeded the limit of 5% authorized by said article; and including in the Request for Proposal for the LIMS project, areas that according

to the law, was not to be handled by the CRIM, which provoked a funds disbursement in excess of what was authorized by its organic law.[6]

Based on the aforementioned, by the nullity of the agreement that is stated previously, the Plaintiff sustains the need for the Court to issue the injunction while it resolves the merits of the controversy. It sustains that if the mentioned

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[6] Other dispositions that rule the entity which they allege were just as well in violation of the acts previously referred to by the co-defendants are the following: Article 9(K) of the Organic Law of the CRIM, supra, 21 L.P.R.A. sec. 5808(K)(hold agreements and legalize agreements or contracts to carry out and meet with the ends of this chapter of any other law whose implementation and execution is entrusted to the Center) and; Art. 10 (which prescribes that the officers and employees of CRIM are subject to the Governmental Ethics Law of the Commonwealth of Puerto Rico); violations to the Purchasing Rules of CRIM, specifically; Art. 6 (regarding official bids); Art. 6(c)(3)(regarding when the appraisals will be opened); 6(c)(4)(which forces to request an execution bond of 5% of the contract to guarantee the execution of the services which were bid; 6(e)(regarding the receipt of offers of the bidders), in particular, Art. 6(E)(1)(c)(which prescribes that the envelopes will not be opened until the date and time of the opening); Art. 6(F)(regarding the opening act of the bid, in particular that which prescribes that only after reading, in the presence of the bidders the offers received, the bidders who are present will be able to examine the propositions); also, Article 10, sections (9)(a), (b) and (c).

contract is non-existent and it is finally determined as such – whose outlook claims to have clearly sustained – the arbitration clause, comprised in this process, would still be the same. It stems from this that the current contracting evaluation corresponds to the court and proceeds to adjourn the acts of the co-defendants before the arbitration jurisdiction to prevent the submitted ruling from being null. It has made it clear, that the new legal representation warned the panel of arbitration the need to hold off the summoned proceedings, in view of the circumstances pertaining to the case and the alleged guilty pleas, without this producing any positive results, leading to the contrary, to the pursuance of the proceedings for disclosure of evidence in full to be held on the next 15th of July. It is also a fact, that no access has been granted to important testimony for the process, therefore the witnesses claim their right

under the Fifth Amendment of no incrimination, therefore the solution for the claim that interests us is strengthened.

The co-defendant entities, ENTEC and CEPI, in synthesis claim that in this case there is no justification for issuing the injunction remedy nor for the court to disclose the present controversy. That is so, due to the fact that the nullity claim from the Plaintiffs' are addressed to the contract in its entirety and not addressed to the arbitration clause, which subject matter, is separable from the rest of the provisions of the contractual agreements that it holds. Due to this a specific controversy has not been provoked regarding the legality of the arbitration agreement, and therefore it has been determined by the Court after the corresponding analysis, the injunction must be denied and refer the subject matter to arbitration as ordered by the Business

Arbitration Law of Puerto Rico, Law No. 367 of May 8, 1951, 32 L.P.R.A., sec. 3171 et seq., specifically, section 32084 (1)(2). It claims that the same result would be arrived at, under the legal frame of the Federal Business Arbitration Law because it holds identical statutory clauses such as ours, and from there it quotes several judicial judgments from such jurisdiction to stand for its theory that the preceding items should be submitted to the arbitration panel in moorings. Evenmore when such jurisdictional and adjudicative trend, assures, that it was the one that voluntarily the plaintiff settled for and in conformity submitted to, actively participating in same, and today, after more than a year after being initiated, it is prevented from disputing it through the setup of attacking it in a general way the contract that interests us.

Regardless of the withstanding arguments, the defendant holds that in any case the submitted evidence is not enough to hold the concerning injunction petition concerning the rules that must be met for its award, particularly, in the probability that the nullity claim from the plaintiff will finally prevail. It alleges that the guilty pleas on which the plaintiff is based for the origins of the appeal, entails an independent appreciation. It makes it clear, --- based fundamentally in sworn statements taken to Messrs. Habibe --- that the facts on which the admissions are based, were not under litigation nor tried in trial, therefore it cannot be relied upon as concluding evidence to that effect. It forewarns that from the exposed probation frame, it cannot be interpreted, that previous to awarding the contract, payments would be made, promises or money solicitations that would facilitate the procurement of

the contract, and that would aim to the success of the resolutory contention of the Plaintiff. Likewise, it claims that the appreciation of the plaintiff is erroneous in relation to the issue that the co-defendants Habibe Arias and Habibe Vargas were not victims of extortion by officers of the CRIM. On the other hand, it challenges the illegal indications that are charged, pertaining to the legal and regulatory dispositions that rule the concerned public entity as a result of its acts in the execution of the exercised official duties.

The plaintiff answered such arguments making a distinction between the quoted jurisprudence and the recurred one, with the ends of demonstrating that the indications stated by this, related to the manner of challenging the arbitration clause, do not dispute the proposed adjudicate resource; it controverts the allegations that the

interposed illegal acts are not enough to dispose of the remedy, that at this phase, is requested in the light of the criteria that governs it, whereas the referred-to admissions point out to the existence of a conspiracy that concluded with the well known [7]

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[7] It is especially point out the fact admitted by the co-defendant Margarita Sanfeliz Wu, related to her meeting with Mr. Habibe, Jr., to assure the compliance of the latter with the requirements of the LIMS project for its eventual execution. Event that was accomplished on year before the contract was legalized and for whose concession, official officers of the entity, within were found Mr. Burgo Lebron,, requested and received payments to that effect, payments which were made once the project was awarded, thus credited inclusively by the same declarations of Messrs. Habibe (in particular, in the sworn statement of Mr. Habibe Vargas, filed by the plaintiff where it establishes in paragraph 17 that: "The first request for payment on behalf of an officer related to the CRIM was received approximately on September 22, 1995, two (2) months after the contract was signed, and once due, liquid and demanded payments owed under the LIMS contract. The payment of these monies and subsequent others were demanded from Mr. Tommy Habibe Arias as a condition for the disbursement of the payment of owed invoices by the CRIM to ENTEC and CEPI for work duly performed and accepted under the LIMS contract". (Sworn statement taken to Mr Tommy Habibe Vargas, of June 4, 2002.). Being the previous clearly demonstrative, judging by the plaintiff, of an articulate conspiracy previous to the contract being duly perfected. To that it is added the other guilty pleas narrowly linked to the previous facts that in its own way of seeing things establish the necessary evidence standard that at this level of the legal procedures that concerns us, and by way of the interested remedial function, judgment is pronounced in its favor. It is pointed out that this has been able to be

contract and; establishes the reasons so that it is not interpreted that the CRIM submitted voluntarily to the arbitration procedure in the court procedures.[8]

Finally, the defendant appeared again through a written document in which it reproduces its regulatory statements supporting the juridical theory that it proposes; distinguishes the quoted jurisprudence by the petitioner; advises the Court that, in conformity with certain sworn statement taken to the then legal advisor of the CRIM, Atty. Carlos Santiago Tabares, it was him who proposed, negotiated and obtained the arbitration clause and;

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demonstrated regardless of the limited discovery of evidence to which it has had access.

[8]Namely: the fact that a new administration began operations in CRIM beginning on the month of January, 2001; the fact that likewise, a new legal representation in favor of CRIM began operations, and in third place, the admission by the highest officer of the CRIM at the time of contracting the LIMS project of criminal acts related with the contracting and implementation of said project. See, Reply to Memorandum in Opposition to Injunction Request and Motion to Force the CRIM to Submit to Arbitration, of June 11, 2002, to pages 6-7.

repeats his contention that the submitted evidence is not enough for the petitioner to be deserving of the pursued remedy.

## III

Having held the preliminary injunction hearing, and having received the corresponding allegations and writings of the concerned parties where they extensively expose their adjudicative theories, we are in the position of resolving the summoned controversy, in the light of the well-known ruling criteria that governs the expedition of the interested reasonable remedy, namely:

1) the nature of the damages that may be caused to the parties if the injunction is granted or denied;

2) the irreparability of the damage or the existence of an adequate remedy by law;

3) the possibility that the promoting party eventually prevails upon solving the suit in court;

4) the possibility that the cause becomes academic if the injunction is not awarded; and

5) the possible impact over the public interest of the requested remedy. See **Misión Industrial v. Junta de Planificación**, 142 D.P.R. 656 (1997); **Municipio de Ponce v. Gobernador**, 136 D.P.R. 776 (1994); **Cobos Liccia v. Dejean**, 124 D.P.R. 896, 902 (1989); **Puerto Rico Telephone Co. V. Tribunal Superior**, 103 D.P.R. 200, 202 (1975).

Taking into consideration that such analysis will have to be displayed in an integral manner, through a rigorous and thorough consideration of all the factors and interests of the involved parties, as it

is inferred from the evidence and of the particular facts submitted before your consideration. **Misión Industrial v. Junta de Planificación**, supra; **García v. Word Wide Entmt. Co.**, 132 D.P.R. 378 (1992), to page 392; **A.P.P.R. v. Tribunal Superior**, 103 D.P.R. 903 (1975); **Cerra v. Fajardo**, 18 D.P.R. 1024 (1912). Taking into consideration also that the purpose to which the referred-to resource responds to is that of maintaining the status quo until the trial by its merits is held so that the conduct of the defendant does not produce a situation which turns the pronounced final judgment into an academic one, or that greater damages are made to the petitioner during the duration of the trial. **Municipio de Ponce v. Gobernador,** supra; **Cobos Liccia v. DeJean Packing Co., Inc.**, supra; **Sucn. Figueroa v. Hernández**, 72 D.P.R. 508 (1951).

Without forgetting that the substantive issue that involves the case before us, (commercial arbitration) states that: when two or more parties agreed in writing to submit to said procedure any controversy that may be subject to an act existing among them at the time of said agreement, or when in a written agreement it is included a disposition to settle through arbitration any controversy that in the future would arise between them or from said agreement or in relation to same, the courts should, as a general rule, respect the will of the parties and validate the agreement ordering the issue to be solved first through arbitration. See, Art. 1 of the Commercial Arbitration Law, 31 L.P.R.A. sec. 3201. That is the product of the rigorous public policy that exists in Puerto Rico in favor of arbitration as an alternate method for the resolution of disputes. **Medina Betancourt v. La Cruz Azul**, op of

November 30, 2001; 2001 J.T.S. 168; **Paine Webber v. Service Concepts, Inc.**, op of July 13, 2000, 2000 J.T.S. 100.

Such interest of the state in promoting arbitration as an alternative mechanism is seen reflected in the arbitrability presumption when the contract has a clause of such nature. **Medina Betancourt v. La Cruz Azul**, supra; **Bird Construction v. A.E.E.**, op. of December 20, 2000; 2000 J.T.S. 202; **World Films, Inc., v. Paramount Pictures**, 125 D.P.R. 352 (1990).

Nevertheless, this becoming policy of arbitration is not absolute nor irrestrictive, since the same is tied to the doctrine of the autonomy of the contractors announced in Article 1207 of our Civil Code. 31 L.P.R.A. sec. 3372. Therefore, such mechanism will only be used if the parties have so agreed and in the manner in which they have agreed

to. **Crufon Construction v. Autoridad de Edificios Públicos**, op. of April 11, 2002, 2002 J.T.S. 24. This is from where the "arbitrability" of a controversy stems, that is, the determination if an agreement creates the right of the parties to arbitrate a particular controversy, is a legal duty. **World Films, Inc., v. Paramount Pictures Corp.**, supra; also, **Crufon Construction v. Autoridad de Edificios Públicos,** supra. It is therefore, a duty of the court as a consequence, to evaluate what are the controversies that the parties agreed to arbitrate, since, after all, "(being arbitration) a contracting issue a party cannot be forced to submit a dispute that said party has not agreed to submit to arbitration". **Municipio de Ponce v. Gobernador**, supra, to page 783, esc. No. 1; **World Films, Inc., v. Paramount Pictures Corp.,** supra; esc. No. 8; also, **Crufon Construction** v. **Autoridad de Edificios**

**Públicos**, supra. Also it must be kept in mind such limitations, that the validity, demandability and finality of said arbitration agreement, being born precisely of volition, will likewise be subject to the same legal basis for revoking any agreement. Art. 1, supra, 31 L.P.R.A. sec. 3201.

The controversy before us, as we have pointed out, is limited in determining if the emission of a preliminary interdiction remedy proceeds, to order the concerned parties of not continuing with the current arbitration procedure in the city of New York, while the court resolves in its merits the nullity of the contract over which such process is based, as is the interest of the plaintiff.

Our jurisdiction is called upon to confer an auxiliary remedy with the end of making possible ulterior adjudicative remedies and with it prevent justice from failing. **Misión Industrial v. Junta de**

**Planificación**, supra, to page 678. For such assignment –with the hope of securing probabilities for success—the determination of the issue of the nullity of the contract of the case is defining—it is one whose evaluation belongs to the legal environment, or in the contrary, it must follow its course in the initiated arbitration procedure.

To the ends of procuring a determination in its favor the defendant leaning, within other regulation arguments, in the statements of the Federal Supreme Court in the case **Prima Paint Corp. v. Flood & Conklyn MFG. Co**. 388 U.S. 399 (1967), and its application to the dispositions of our arbitration law, upholds its theory, that the general impugnation of the contract that the plaintiff makes, only strives to by-pass the arbitration procedure to whom this voluntarily submitted to, regardless of the fact that such impugnation is only conceded,

according to the principles portrayed by him, if it would be questioned in a specific way the arbitration clause that makes possible such procedure, whereas this is separable from the referred to agreement. It sustains that since it does not concur in the current case we are forced, to remit the relevant matter to the nullity of the contract to the examination of the court that was originally agreed to by the parties, the arbitration jurisdiction.

To sustain this, it quotes among others, the following statements of said case:

> "Accordingly, if the claim is fraud in the inducement of the arbitration clause –an issue which goes to the "making of the agreement to arbitrate—the federal court may proceed to adjudicate it (footnote omitted). But the statutory language does not permit the federal court to consider claims of fraud in the inducement of the contract

generally". Id, to pages 403-404.

Nevertheless, it cannot be concluded of such statements nor of the integral analysis of said decision and of the complementary dispositions of the quote, that the impugnation exercised by the plaintiff, is prohibited. A concise examination of its allegations, reveal that this impugnation is not rendered upon the base of a contract that originated at some point, by means of its proper formality and perfectionism but that lacks a vice that will invalidate it, but instead over the base of a contract that simply never existed, without never arriving to a legal life. Nothing in said jurisprudential indications point to show that such position cannot

co-exist with the ruling achieved in **Prima Paint**, supra.[9]

The exposed distinction is essential, since if the contract what it deals with is inexistent, and it is finally established as so, and it cannot escape the arbitration clause included in it, whereas of a null act no accessory rights can be derived from, consequently a party cannot be forced to arbitrate an issue, as is the nullity of the contract in discussion, whose elucidation could have the effect of precisely voiding the base over which the same arbitrator

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[9] As a matter of fact, in the referred-to case of **Prima Paint**, supra, we did not perceive specific statements that approach this impugnatory basis that goes to **the very same existence of an agreement** that a party claims on not having agreed to, because of this never having produced juridical results. On the contrary, the focus of the displayed analysis in such federal decision –consisting in the previously exposed–-is given under the frame of a contracting that existed, but due to specific anti-juridical acts, had an impact and damaged is efficiency. See, **Three Valleys Mun. Water Dist. V. E.F. Hutton**, 925 F.2d 1136 (9th Cir. 1991) ("...we read **Prima Paint** as limited to challenges seeking to avoid or rescind a contract-not to challenges going to the very existence of a contract that a party claims never to have agreed to. A contrary rule would lead to untenable results"). Id., to page 1140.

derives jurisdiction, and the ones to provide the substantive issues that this would examine; that is to say, the contract in itself. Said in another way, if there is no contract, the only thing to do would be to arbitrate.

Please be advised as firmly established in our code of laws, that ..."what is null never had any efficiency, never came to birth legally, never existed". **Montanes Rivera v. Policia de P.R.**, op of May 3, 2000, 2000 JTS 81; quoted in, **Aurora Acevedo v. Municipio de Aguadilla**, op. of April 11, 2001, 2001 JTS 54.

Upon evaluating the controversy under the preceding analytical focus, we must conclude that the arbitration clause that concerns us here, cannot be separated from the contract that formalizes it, so that when the plaintiff challenges in this case the existence of said agreement, we should interpret that

it does so in the same manner for the referred-to arbitration clause.

That is what is precisely pursued in this case when it is requested that we prevent the continuation of the arbitration procedure under our consideration, under the sanction that the clause from where it derives would not survive the serious indications that have an effect in the contract in which it is included. Certainly, according to the evidence of facts credited and incorporated in the factual account of this Judgment clearly demonstrate, such service contract from the LIMS project, was generated over the basis of facts for which the contractors, those who represented the State in such administrative contracting in their character asf official officers, as well as those who appeared at the same to offer said services as providers, among other intermediaries and related

persons, have been indicted of felonies in the Federal District Court, for which they also, pleaded guilty, as well as for the specific facts to which they agreed to. Such robust evidence, establishes, at least, to the ends of the preliminary remedy that we are evaluating, and to the excellence of this procedures, as a consequence, a high probability that the plaintiff—whereas such evidence points out that said contract is the product of the referred-to admitted criminal acts by the parties involved—will eventually prevail in the concerned contracting nullity decree. Remember, that the arbitration agreements are subject to the same legal basis on the annulment of any agreement. Art. 1, supra; in this case, due to the awarding of the referred-to contract, against the law, the morals and the public order:

The contracts without a cause, or with an illegal cause, do not produce any effect. The cause is

illegal when it is opposed to the laws or to the morals. Art. 227, 31 L.P.R.A sec. 3432. See also, **De Jesus Gonzalez v. Autoridad de Carreteras**, op. of April 30, 1999; **Hatton v. Municipio de Ponce**. 134 L.P.R.A 1001 (1994); **Morales v. Municipio de Toa Baja**, 119 D.P.R. 682 (1987).

Also, acts executed contrary to what is disposed by law, are null, except in cases in which the same law orders its validity...Art. 4, supra, sec. 4.

So then, if in its day such contracting nullity determination should be reached, whose probability of success, judging by the preceding, present unequivocal merits, the arbitration procedure that issues forth from it would therefore come to happen as ineffective and totally inofficious. There would be no jurisdiction over which to lean on for such arbitration procedure no contract that would justify

it.[10] From there stems the need that it should be the court whom finally resolves by its merits the validity of the contract in controversy[11], and be at the same time necessary, to assure, the halting of the arbitration process referred to. Were it not so, and permit that such arbitration process keeps its due course, it would not only threaten to frustrate and turn academic precisely such determination, that belongs in this case to the Court, as we have established, but it would expose the plaintiff to the

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[10] "If proven, the petitioner is in position where it rightfully has rescinded the contracts. If this be so, no arbitration may had since the provision therefore in each contract would fall with the contract itself". **Application on Manufacturers Chemical Co.**, 19 N.Y.S. 2d. 171 (1940), to page 173.

[11] "...(a) party who contests the making of a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of the existence of an agreement to arbitrate. Only a court can make that decision". **Three Valleys Mun. Water Dist. V. E.F. Hutton**, supra, to pages 1140-1141. Also, it cannot be forgotten that under our code of laws it is the courts the forums par excellence to examine those substantive issues of a contracting nature for being that in their particular expertise. **Arthur Young v. Vega**, 136 D.P.R. 157 (1994); also, **Municipio de Ponce v. Gobernador**, supra.

litigation of multiple suits, and incompatible rulings. These, as is well known, are part of the classic circumstances to whom the pertinency of the injunction responds to, as an auxiliary resource, since this is available "...if it is necessary to maintain the status quo and prevent that from the mere passage of time the plaintiff will remain without an effective remedy, as well as to protect a proprietary right threatened by an imminent illegal act of the defendant". **Municipio de Ponce v. Gobernador**, supra, to page 787, quoting David Rive Rivera, **Recursos Extraordinarios** ("Extraordinary Resources"), Atlanta, Darbury Printing Co., 1989, to page 26.

It must remain obvious, nevertheless, that the disposition reached does not pretend to prejudge the controversy of the contractual validity, nor does it pretend to establish the final criteria to that respect;

as previously indicated, this is an issue to be determined by trial, and not through the current resource. The current ruling only pretends to guarantee that the preceding legal exercise will be effectively generated, preventing that it will be threatened by the continuation of the exposed arbitration procedures, through an injunction aid, based on the evidence kept in the court records, which we understand offers the weight and needed probation worthiness, in the light of the criteria that informs such remedy, to support its concession.[12]

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[12] Be advised that the submitted ruling, is not based on the other allegations of illicitness exposed by the plaintiff, consisting in violations to legal and regulatory dispositions that is charged to the administrative contracting referred to, that being since the juridical complexities that are ready –specially, those relative to the excess of 5% authorized by the CRIMs' law—will request a more detailed examination that may be furnished by the thorough procedure that hereinafter will be held. That, certainly, goes beyond the possibilities of the remedy that concerns us, regardless of the fact that, as stated previously, the submitted evidence is enough for the decisive course here adopted.

Finally, its must be emphasized that it does not have an effect at all in the previous result, the acts committed by the plaintiff in the arbitration procedures that the defendant interprets as indicative of submission. The guilty pleas of persons that compose the defending party, especially the former director of CRIM, Mr. Eduardo Burgos for felonies related to the contract, the alluded arbitration in process, and the high considerations of public interest that it inevitably carries, disclose a substantial change of scenery that is certainly imposed over any pretense of acting to the contrary.

IV

In accordance to the previously exposed, including the facts determinations and the exposed reasons, we pronounce interdictal remedy through which we order the halting of the arbitration process initiated, ordering in conformity, to the entities that

compose the defending Consortium, namely, Entec Corporation (Entec), Consulta Económica y Planificación (CEPI) and Tommy Habibe Arias to abstain from appearing in said procedure from this time forth, while the Court determines through final and solid Judgment the validity of the disputed contract. Issue that for its elucidation we remit to the ordinary legal procedure. Once executed, and duly determined the nullity of the contract referred to, the referred to pending litigation remedy here submitted will come to happen therefore, in a perpetual manner.

FILED AND NOTIFIED.

In San Juan, Puerto Rico, on June 27, 2002.

/signed
SONIA IVETTE VELEZ COLON
Superior Judge

2002 WL 32131029 (TCA)

CENTRO DE RECAUDACIONES DE INGRESOS MUNICIPALES (CRIM), Plaintiff,

V.

ENTEC CORPORATION, ETC. DEFENDANTS,

Civil No. KPE02-2012

KLCE0200793

IN THE CIRCUIT COURT OF APPEALS

In San Juan, Puerto Rico, as of October 31, 2002

Certiorari Proceeding from Superior Court, San Juan Part

Panel integrated by its' president, Judge Fiol Matta, and the judges González Rivera and Rivera Martínez

SENTENCE

RIVERA MARTINEZ, Proposer Judge

*1 Appearing before us ENTEC Corporation (ENTEC) and Consulta Económica y Planificación, Inc. (CEPI), by means of certiorari recourse presented on July 29, 2002, requesting the revocation of Resolution of June 27, 2002, pronounced by the First Instance Court, in the case Centro de Recaudaciones de Impuestos Municipales v. ENTEC Corporation, et al, case no.: KEP02001-2012, which was filed in court proceedings, on June 28, 2002.

In said resolution, it was ordered through an interdiction remedy the suspension of an arbitration procedure, until the Court determines through final judgment and signs the validity of the contract in dispute.

Court proceedings and applicable laws examined, we confirm the appealed resolution.

I

On July 20, 1995, the Centro de Recaudaciones de Impuestos Municipales (hereinafter the CRIM), and a consortium composed of ENTEC, CEPI and Héctor Luis Rivas and Associates (hereinafter the Consortium), subscribed a contract (hereinafter the LIMS contract). Mentioned contract stipulated that the Consortium would be in charge of the design, development, installation and implementation of a digitalized land registry system, known as "Land Information Management System" LIMS.

It was stipulated just as well that the price for the work performed would be, $56,042,352.00; amount that the CRIM would pay in accordance to the work performed through the different phases of the project. The parties agreed that any dispute or difference that would arise in relation to the LIMS contract, that could not be solved by these same parties, would be adjudicated by means of an arbitration procedure. For this purpose, the arbitration clause in controversy disposes:

22. ARBITRATION

22.1 ARBITRATION

Any difference or disputes arising out of or in connection with the execution of this Agreement shall be settled by an amicable effort on the part of all parties.

22.2 JUDGMENT

All disputes, controversies and questions that may arise under this Agreement that cannot be solved satisfactorily between the Contractor and CRIM shall be resolved any (sic) arbitration conducted in Puerto Rico in accordance with the Rules of the

American Arbitration Association, by an arbitrator appointed by the Association. The arbitrator shall be governed by, and apply the substantive law of Puerto Rico and the findings shall be final and binding upon the Contractor and CRIM and shall be a condition precedent to any right of legal action. Judgment on such award may be entered in any court having jurisdiction thereof. The parties shall share the cost of arbitration.

This being the case, on September 20, 2000, the Consortium presented an arbitration petition before the American Arbitration Association, (hereinafter AAA), in the state of New York. The Consortium alleged that CRIM unfulfilled its' obligations under the subscribed contract. As a consequence, payment was requested for $2,241,685.78 for services rendered according to the LIMS contract; $1,626,186.16 for maintenance services, and $6,699,578.00 for accepted changes to the specifications of the LIMS project. The Consortium also claimed $5,000,000.00 in damages.

***2** On December 11, 2000, CRIM appeared before the AAA and alleged that the Consortium had unfulfilled the contract and had unduly collected $161,697.60. For that purpose, CRIM requested payment on referred amount plus damages for breach of contract in an amount not less than $20,000,000.00.

On the other hand, on May 21, 2001, CRIM filed before the AAA Notice to Appear in Court and Request to Halt Arbitration. In mentioned document, CRIM through its' legal representation, informed that it was evaluating the contract subject to controversy since it is alleged that the same was obtained through fraud perpetrated by the previous officers of the CRIM in conspiracy with officers of the

claiming corporations. All of this, due to the investigations that were being done by the Office of the General Prosecutor. It must be said, that on this date and as it is alleged, said investigation had obtained the result of an indictment to Mr. Eduardo Burgos Lebrón, Executive Director of the CRIM and who signed the controversial contract, on behalf of the CRIM.

On June 8, 2002, The Arbitration Court denied to cease arbitration and established a schedule for the case.

For this purpose, on July 13, 2001, the CRIM amended its' answer for the arbitration petition ("Amended Response to Demand for Arbitration"), where it alleged that the LIMS contract should be annulled because it was subscribed in a fraud frame. The argument was based on the fact that on August 8, 2000, indictments were presented in the Federal District Court for the District of Puerto Rico, against several employees of the CRIM and officers of the Consortium.

On August, 2002 the federal government indicted on felony charges several former employees of the CRIM and employees of the Consortium. Said crimes were related to issues associated with mentioned contract. Among the indicted are:

Mr. Eduardo Burgos, who at the time of structuring, bids, negotiation and signing of the LIMS contract was the Executive Director of the CRIM. Mr. Burgos was declared guilty of two felony charges consisting in violating the so named Hobbs Act, 18 U.S.C., sec. 1951 (a), in the mode of conspiracy, and 18 U.S.C., 1956(a)(1)(B)(i) and 1956(h). Mr. Burgos accepted under oath his culpability of felony to conspire to interfere with interstate commerce through extortion

induced by economic means and/or under color of official right, in the case U.S. v. Bernardo Negrón, and others Criminal No.: 00-660. Mr. Burgos admitted as well, culpability in charge eighteen (18) of the indictment, based upon the felony charges to conspire to money laundering product of an illegal activity. Mr. Burgos accepted that had this case gone to trial, the government of the United States, would have proven the following facts among others.

*3 In or about June, 1994, and continuing through in or about March 2000, in the District of Puerto Rico and elsewhere, defendant Eduardo Burgos Lebrón, while serving as Executive Director of Centro de Recaudaciones e Ingresos Municipales (hereinafter the CRIM), participated in a conspiracy with Bernardo Negrón Montalvo, Margarita Sanfeliz Wu, Tommy R. Habibe, Sr., Tommy O. Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, a/k/a "Jacko", Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Carlos Serra Vélez, Benjamin Wu, Haydeé Figueroa Guzmán, and José Rafael Vázquez, and others, to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm, in violation of Title 18, United States Code, Sec.1951.

Defendant Burgos Lebrón requested and received these sums of monies or third party services, in exchange for him assisting in approval of the contract for the LIMS project and for his approval and authorization of payment vouchers in relation to the LIMS project. (...) monies ... totaling approximately $238,500.00 from in or about September, 1995 through in or about July, 1999.

As part of the conspiracy, defendant Burgos Lebrón received third party services from co-defendant Héctor Luis Rivas Colón in or about 1995. Co-defendant Héctor Rivas Colón made arrangements with co-defendants Guillermo Colón Santos, a construction contractor, to build an enclosed gazebo at the home of the defendant Burgos Lebrón in Los Paseos, Río Piedras, Puerto Rico. The gazebo was built to facilitate Burgos' help to the consortium of companies which were awarded the LIMS contract with any problems they might face in the request for payments or otherwise. The consortium of companies were operated by co-defendant Héctor Rivas Colón, Tommy O. Habibe Vargas, Tommy R. Habibe Arias, John P. Stephens Rexach and others. The cost of the gazebo was approximately $10,000.00. Between in or about September, 1995, and continuing to in or about July, 1999, defendant Burgos Lebrón also requested and received numerous cash and check payments for his benefit, political purposes and/or others from co-defendant Tommy O. Habibe Vargas, Tommy R. Habibe Arias, and/or Héctor Rivas Colón. Defendant Burgos Lebrón received cash payments totaling approximately $228,500.00.

During the prosecution period, defendant Burgos Lebrón shared a portion of the money with co-defendant Cándida Rodríguez Larrendowtte, the CRIM's Assistant Director, and co-defendant Wanda Rodríguez Hernández, who were aware the money provided by the defendant Burgos Lebrón was proceeds paid by co-defendants Tommy O. Habibe Vargas, Tommy Habibe Arias, and/or Héctor Rivas. Defendants Burgos Lebrón made numerous cash payments to co-defendants Cándida Rodríguez

Larrendowtte and Wanda Rodríguez Hernández in amounts ranging from $2,000.00 to $25,000.00. Between in or about October, 1995, and continuing to through or about August, 1998, defendant Burgos Lebrón paid over to co-defendant Cándida Rodríguez Larrendowtte, approximately $71,000.00 and to co-defendant Wanda Rodríguez Hernández approximately $20,000.00. During the prosecution period, defendant Eduardo Burgos Lebrón received and used some of the cash payments from co-defendants Tommy Habibe Arias to pay for personal expenses. In addition, Eduardo Burgos Lebrón received and used some of the cash payments from co-defendants Tommy R. Habibe Arias to purchase a boat and to pay for political contributions.

*4 In or about October, 1997, defendant Burgos Lebrón requested and received a payment totaling $49,000.00 from co-defendant Tommy R. Habibe Arias to purchase from a third party a 1997 Carver 260 motor boat that was valued at $59,995.00.

Defendant Burgos Lebrón requested that the third party register the 1997 Carver 260 motor in the name of co-defendants Wanda Rodríguez-Hernández. In or about December, 1997, co-defendants Tommy R. Habibe Arias transferred an existing checking account at Banco Santander de Puerto Rico, San Juan, Puerto Rico, to a third party. Defendant Burgos Lebrón and co-defendant Cándida Rodríguez Larrendowtte designated the third party. Co-defendants Tommy R. Habibe Arias had deposited money in the account to be used by defendant Burgos Lebrón and co-defendant Rodríguez Larrendowtte. From in or about November, 1997, and continuing through in or about May, 1999, the third party made cash withdrawls of approximately $37,500.00 and

provided the cash to defendant Burgos Lebrón, who in return used part of the cash for political contributions to the New Progressive Party.
See "Plea Agreement" with Mr. Eduardo Burgos Lebrón and "Government's Version of the Facts", incorporated to the aforementioned agreement.
On the other hand, Mrs. Margarita Sanfeliz Wu and her entity, by the name Urbanística, Ltd., were under contract by the CRIM since July 1994, thirteen months before the signing of the LIMS contract, until March, 2000. Mrs. Sanfeliz, operated as advisor to the CRIM, by means of a contract, to provide all the needed technical assistance in the development of the LIMS contract, in particular, to prepare the document, "Request Proposal", where the guidelines that would be taken into consideration were established for selecting the entity to whom the alluded project would be assigned to. On February 14, 2002, Mrs. Sanfeliz, before Federal Judge Salvador Casellas, pleaded guilty to two felony charges that were charged in the case U.S. v. Bernardo Negrón, supra. Charge number one (1), consisting in conspiring to interfere with commerce through extortion for economic fear and/or under color of official right; the second one, charge number seventeen (17) on the indictment against her in referred to case, conspiracy for money laundering. With such declaration, she admitted as Mr. Burgos Lebrón did, the fact that on or about June, 1994, continuing to on or about March, 2000, while occupying said position, conspired with the co-defendants to affect commerce and interstate movement of articles through extortion under color of authority and fear of economic harm in violation of Title 18, USC,Sec.1951.

It is specifically added, with respect to the "Plea and Cooperation Agreement" between Mrs. Sanfeliz and the Federal Prosecutors' Office that:

Essentially, on or about July 29, 1994, defendant Margarita Sanfeliz Wu, was hired as a consultant to the LIMS project by the Executive Director of CRIM Eduardo Burgos Lebrón pursuant to instructions of co-defendant Bernardo Negrón Montalvo. After being hired defendant Sanfeliz Wu met in Washington, D.C. with co-defendant Habibe, Jr. in order to discuss the LIMS project and requested and received from Habibe, Jr., a requested sample proposal for the LIMS project which would ensure that the CONSORTIUM formed by co-defendants, complied with the requirements for the LIMS project. *5 Once the proposal were submitted, defendant Sanfeliz Wu provided the members of the Evaluation Committee a RFP (Request for Proposal) that was based on information provided by co-defendant Habibe, Jr. Defendant Sanfeliz Wu also proceeded to provide defendant Habibe, Jr., with a copy of the competitor's proposal for his evaluation. Defendant Sanfeliz Wu, then prepared and submitted a report of the Board of Directors of CRIM which recommended the proposal submitted by the CONSORTIUM, this report was prepared using the evaluation performed by co-defendant Habibe, Jr. On July 18, 1995, defendant Sanfeliz Wu provided the Board of Directors of CRIM a favorable analysis of the terms and conditions of the contract causing the award of the $56,000,000.00 LIMS contract to the CONSORTIUM.

Throughout this period of time defendant Sanfeliz Wu would request and receive sums of monies from co-defendants Tommy O. Habibe Vargas and Tommy

R. Habibe Arias, Héctor Luis Rivas and John P. Stephens who at the time were contractors working for CRIM in a system known as LIMS, in exchange for defendant Sanfeliz recommending their group for the project and once awarded the contract for her recommending the approval and authorization of the payment vouchers of the LIMS project. Because of fear of economic harm approximately $484,118.94 was paid by the co-defendant to Margarita Sanfeliz Wu and her husband co-defendant Benjamin Wu. All in violation of the Title 18, United States Code, sec.1951.

In or about October, 1995, and continuing through on or about March, 2000, in the District of Puerto Rico and elsewhere within the jurisdiction of this Court, defendant, Margarita Sanfeliz Wu, while serving as the advisor to the Board of Directors of CRIM, participated in a conspiracy with co-defendants, Bernardo Negrón Montalvo, Tommy R. Habibe Arias, Tommy O. Habibe Vargas, Eduardo Burgos Lebrón, Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Benjamin Wu, and Roberto Roca Buigas, to knowingly and willfully conduct financial transactions knowing that the proceeds involved in the financial transactions involved proceeds of some form of unlawful activity, knowing that the transactions are designed, in whole or in part, to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the specified unlawful activity, to wit violations of the Title 18, United States Code Sec.1951.

Essentially defendant Margarita Sanfeliz Wu, received numerous cash payments from co-defendant, Tommy O. Habibe Vargas, Tommy R. Habibe Arias, Héctor Luis Rivas Colón, John P.

Stephens and Roberto Roca Buigas money which he used for her personal benefit and which she shared with her husband co-defendant Benjamin Wu. As a part of the method by which defendant Sanfeliz Wu received the money a fake and fraudulent contract for professional services was issued between co-defendants Habibe, Jr., and Benjamin Wu, defendant Benjamin Wu would submit fake and fraudulent invoices to codefendant Habibe, Jr., using the names Urbanística, Ltd. An then a check would be issued from Habibe, Jr., to Urbanística, Ltd., which defendant Sanfeliz Wu would deposit into an account of her control. In addition following instruction of defendant Sanfeliz Wu, Habibe, Jr., would issue checks directly to co-defendants Benjamin Wu. All in violation of Title 18, United States Code sec.1956(h).

***6** The money which Margarita Sanfeliz Wu received was used by her for the payment of personal expenses particularly, Sanfeliz Wu used a sum of money for the purchase of a home in Virginia which she later sold. In total defendant Sanfeliz Wu received in checks and cash approximately $484,118.94 pursuant to Title 18, United States Code, Section 982(a).

See, "Plea Agreement" with Mrs. Margarita Sanfeliz Wu: "Government's Version of the facts", incorporated to aforementioned agreement.

On the other hand and just the same, Carlos Serra Vélez was a member of the Board of Directors of the CRIM from 1993 until 2002, and member of the Price Negotiating Committee of the LIMS contract together with Bernardo Negrón, who worked as President of the Board of Directors of the CRIM. He pleaded guilty to crime number one (1) of the indictment in the case U.S. v. Bernardo Negrón,

supra, felony, consisting in conspiring to interfere with interstate commerce through extortion inducing consent for fear of economic harm and/or under color of official authority in violation to Hobbs Act, 18 U.S.C.sec.1951(a).

This being the case, admitted what would in the same way been proven by trial, that about June 1994, continuing on or about March 2000, while occupying referred to position, conspired with co-defendants to affect commerce and interstate movement of articles through extortion under color of authority and fear of economic harm in violation of Title 18, United States Code, Sec.1951.

In particular, admitted that it could have been proven by trial the following:

Essentially, Tommy Habibe Vargas would receive request for sums of money, from Eduardo Burgos Lebrón, Bernardo Negrón Montalvo and Carlos Serra whom at the time were the Executive Director and president and members of the evaluating committee of the LIMS project.

On or about the dates listed below, the defendant Carlos Serra received the following payments in the amounts specified below, in consideration of the award of the LIMS project to the CONSORTIUM:

On or about January 19, 1996, defendant Carlos Serra received from co-defendant Héctor Rivas a trip to Cuba.

On or about July 3, 1996, defendant Carlos Serra received from codefendant Habibe, Jr., two $1,000 checks as a donation to his political committee Serra's 96.

On or about August 26, 1997, defendant Carlos Serra received from codefendant Héctor Rivas a $500.00 check made payable to 'Comité PNP Corozal'.

On or about May 8, 1998, defendant Carlos Serra received from codefendant Habibe, Sr., two checks made payable to 'Comité Amigos Carlos Serra'. All in violation of Title 18, United States Code, Section 1951(a).

See, "Plea Agreement" with Mr. Carlos Serra Vélez and "Government's version of the facts", incorporated to the aforementioned agreement.

Mr. Bernardo Negrón Montalvo was President of the Board of Directors of the CRIM from 1993 until November 1998, after which he was named to said Board as an ad hoc member, with voice but no vote, whose revision was approved by referred to body. Mr. Negrón Montalvo, pleaded guilty on April 24, 2002 to charges numbers 1, 18, and 26 of the indictment issued against him in the case U.S. v. Bernardo Negrón. Charges 1 and 18-felony- are the same charges to whom Mr. Eduardo Burgos pleaded guilty to as well as all of the previously accused.

*7 With such declaration, admitted, that if trial would have been held, the government would have proved that on or about June, 1994, continuing to on or about March, 2002, while holding mentioned position, Negrón Montalvo conspired with the co-defendants to affect commerce and interstate movement of articles through extortion under color of authority and fear of economic harm in violation of Title 18, United States Code, Sec.1951.

He particularly admitted to the following in referred case:

Essentially, sometime prior to June 1994, defendant Bernardo Negrón Montalvo met with contractor Nelson Soto and agreed that the CRIM's LIMS project would be awarded to Nelson Soto and his group. At the time, defendant Bernardo Negrón

Montalvo was the mayor of the municipality of Villalba and the President of the Board of Directors of CRIM.

On or about July 1994, defendant Negrón Montalvo introduced co-defendant Margarita Sanfeliz Wu to Eduardo Burgos Lebrón, then Director of CRIM and informed him that she was going to be hired as consultant to the LIMS project for CRIM.

On or about May, 1995 and following instructions of defendant Bernardo Negrón Montalvo defendant Margarita Sanfeliz Wu recommended to the negotiating committee of CRIM that the LIMS project be awarded to the group composed by Nelson Soto, Héctor Rivas, Tommy O. Habibe Vargas, Tommy R. Habibe Arias and John P. Stephens, also known as the Consortium.

Said accused, received payments in consideration to the concession of developing the LIMS project to the CONSORTIUM, as part of the conspiracy, amounting to $119,393.85, which were made by Mr. Héctor L. Rivas, Nelson Soto, Tommy Habibe and Tommy O. Habibe, Jr.

Of previously mentioned payments, the one standing out is the one amounting to $25,000.00 in cash that Mr. Negrón received by Mr. Tommy Habibe, Jr., on March 10, 2000, when Mr. Negrón was no longer President of the Board of Directors, nor did he have the right to vote in the same. See, "Plea Agreement" with Mr. Bernardo Negrón Montalvo and the "Government's version of the facts", incorporated to the preceding agreement.

On the other hand, Mr. Benjamin Wu is husband of co-defendant Margarita Sanfeliz. He pleaded guilty—of one perjury charge—for having lied to the Grand Jury. This being so, when he testified before

such, that he had signed a contract with CEPI when actually he "...did not have legitimate contract with CEPI and the payments received by him were payments made to disguise kickback payments for his wife, defendant Sanfeliz Wu, pursuant to the request of defendant Sanfeliz Wu. All of this was conducted in violation of Title 18, United States Code, Section 1623". See "Plea Agreement" with Mr. Benjamin Wu and "Government's version of the facts", incorporated to aforementioned agreement.

On the other hand, Tommy Habibe Arias (Habibe, Sr.) was principal of ENTEC at the time of the LIMS contact and member of the Consortium to whom the development of the LIMS project was adjudicated. He pleaded guilty in relation to charges numbers 1 and 18 of the indictment in the case U.S. v. Bernardo Negrón, supra the same charges to which Mr. Burgos Lebrón pleaded guilty.

*8 With such declaration, admitted, as well as the previously indicted, the fact that on or before June, 1994, continuing to on or before March, 2002, while holding referred to position, conspired with the co-defendants to affect commerce and interstate movement of articles through extortion under color of official authority and fear of economic harm in violation to Title 18, United States Code, Sec.1951.

He also admitted the following in relation to referred case:

On or about September 22, 1995, defendant HABIBE ARIAS started to receive demands for payments from codefendant Bernardo Negrón, then president and/or member of the Board of Directors of CRIM. These demands were in the form of solicitations of contributions from defendant's NEGRÓN political campaign for mayor of Villalba.

They were also demands for payments of debts owed by his political campaign. In his demands to defendant HABIBE ARIAS, NEGRÓN made it clear that he had the authority to stop payments of the LIMS contract as well as to terminate or cancel the contract. From September 22, 1995 to March 10, 2000, defendant HABIBE ARIAS paid co-defendant NEGRÓN approximately $41,416.00.

On or about October, 1995, defendant HABIBE ARIAS started to receive demands for payments from codefendant BURGOS LEBRÓN. These demands were received by HABIBE ARIAS when he visited BURGOS LEBROS at his office in Puerta de Tierra. As the Executive Director of CRIM, defendant BURGOS LEBRÓN would request different sums of monies from HABIBE ARIAS in order to expedite the payment process of the LIMS project and to approve pending change orders related to the LIMS project. Most of the time defendant BURGOS LEBRÓN would write the desired amount of money on a little "post it note" and give the note to defendant HABIBE ARIAS. If HABIBE ARIAS wanted to receive the payments due for work performed and/or pending authorizations of change orders he had to comply with BURGOS' demands. From October 1995 continuing to July 1999 defendant HABIBE ARIAS paid Burgos in cash, check and goods approximately $208,500.00.

On or about July 3, 1996 defendant HABIBE ARIAS received a request from then member of the CRIM Board of Directors, defendant SERRA, for political contribution to his re-election campaign for Mayor of Corozal. When the request was made for the contribution defendant SERRA reminded defendant HABIBE ARIAS that he was a member of the Board

of Directors of CRIM and had the power to stall the LIMS contract and make life difficult for HABIBE ARIAS in the performance of the contract. From July 1996 to May, 1998, defendant gave co-defendant SERRA approximately $4,000.00. On or about July 30, 1996 defendant HABIBE ARIAS started to receive demands for payments from co-defendant SANFELIZ WU, then the advisor to the Boar of Directors of the LIMS contract, in exchange for her continuous help and support to the CONSORTIUM. Defendant SANFELIZ WU, reviewed all invoices and change orders submitted by HABIBE ARIAS and without her approval CRIM would not pay out any sum of money to the CONSORTIUM. From July 1996 through November 1997, defendant HABIBE ARIAS paid codefendant SANFELIZ WU through defendant BENJAMIN WU approximately $274,118.94.

***9** On or about December, 1996, defendant HABIBE ARIAS paid co-defendant RODRÍGUEZ LARRENDOWTTE, then Assistant Director of the CRIM, a Christmas bonus of $5,000.00 for her continuous help and assistance in all matters related to the LIMS payments. See, Plea and Cooperation Agreement Mr. Tommy HABIBE ARIAS AND; Governments version of the facts, incorporated to the aforementioned agreement.

Mr. Tommy Habibe Vargas was President and owner of the enterprise ENTEC. On April 25, 2002 he pleaded guilty to charge number one (1) of the indictment against him in the case U.S. v. Bernardo Negrón, supra, on which his father, Mr. Tommy Habibe Arias and Mr. Eduardo Burgos pleaded guilty.

With such declaration, he admitted, as well as the previously indicted, the fact that on or about June, 1994, and continuing to on or about March 2002, while occupying said position, he conspired together with the co-defendants to affect commerce and interstate movement of articles through extortion under color of official authority and fear of economic harm in violation of Title 18, United States Code, Sec.1951.

He also admitted the following on referred case:

Essentially, defendant, Tommy Habibe Vargas met with codefendant Margarita Sanfeliz Wu to discuss the proposal for the submission of the LIMS project before the project went out for bidding. It was agreed amongst the defendants that defendant Habibe Vargas would prepare the specs for the project that was going to be submitted to the general public for bidding by CRIM. Furthermore, defendant, Tommy Habibe Vargas would receive request for sums of money, from Eduardo Burgos Lebrón, Bernardo Negrón Montalvo, and Carlos Serra whom at the time were the Executive Director and President and a member of the Board of Directors of CRIM respectively. These requests were made in exchange for co-defendants Burgos and Negrón approving and authorizing the payment vouchers of the LIMS project as well as change orders. Because of fear of economic harm approximately $450,000.00 was paid to co-defendants to Eduardo Lebrón and Bernardo Negrón Montalvo. Defendant Negrón Montalvo used some of the money to pay for his political campaign. Upon defendant's Negrón Montalvo's request, defendant Habibe Vargas made political donations as well as payments for the economic support of the Villalba basketball

team. Defendant Eduardo Burgos Lebrón shared some of that money with co-defendant Cándida Rodríguez Larrendowtte and Wanda Rodríguez whom at the time were Assistant Director of CRIM and Director of Finance of CRIM. In addition, defendant Tommy Habibe Vargas gave money to codefendant Eduardo Burgos Lebrón for the purchase of a 1997 Carver 260 motorboat worth approximately $59,995.00 at the time of purchase. Both Cándida Rodríguez Larrrendowtte and Wanda Rodríguez were aware of the proceeds of the money they were receiving from co-defendant Eduardo Burgos Lebrón.

***10** In addition, Tommy Habibe Vargas upon request from co-defendant Margarita Sanfeliz Wu, made various payments to her through the use of third party companies such as Urbanística, Ltd., and by making out payments to her husband and co-defendant Benjamin Wu. At the time the request were made co-defendant Margarita Sanfeliz Wu was the consultant to the Board of Directors of CRIM for the LIMS project. At the time co-defendant Benjamin Wu received the payments from Habibe Vargas he was fully aware of the nature of the payments and alleged he had a contract with Habibe in order to hide the fact that the payments were for help given by Sanfeliz Wu in the approval of payments related to the LIMS contract.

All in violation of Title 18, United States Code, Sec.1951.

The money which Tommy Habibe Vargas gave was used by Burgos Lebrón, Negrón Montalvo, Margarita Sanfeliz Wu and Carlos Serra for the payment of personal expenses and for the purchase of properties.

Title 18, Untied States Code, Section 982(a).

To the previous guilty pleas, are joined the ones recently made by the following indictments in the referred to case, as we explain as follows:

**(FN(1)**

Mr. John P. Stephens Rexach was one of the members of the consortium to whom the contract for the development of the LIMS project was awarded. He was also a business partner of codefendant Héctor Luis Rivas, who at the same time held the position of President of one of the companies that comprise the Consortium ("HLRA"). He pleaded guilty to charge number seventeen (17) of the indictment submitted by the Federal Grand Jury (Conspiracy to Commit Money Laundering, 18 USC, 1956h). He is imputed of having previous knowledge that the co-defendant Margarita Sanfeliz Wu, in her capacity as advisor to the Governing Board of CRIM, was receiving money in exchange for her being a facilitator of the businesses of the Consortium with the CRIM.

He admitted, by virtue of his agreement with the Federal Prosecutors' Office, to the following facts:

On September 1995, John P. Stephens Rexach was in a meeting with co-defendants Vázquez and Rivas in which defendant Rivas was discussing the payments that he was going to make to defendant Margarita Sanfeliz Wu. Defendant Rivas prepared a manager's check in the amount of one hundred thousand dollars ($100,000.00) made payable to Margarita Sanfeliz Wu. Defendant Vázquez advised Rivas in the presence of Stephens that it would be too dangerous to make this payment in such a fashion and suggested that the check for one hundred thousand dollars ($100,000.00) made payable to Margarita Sanfeliz Wu. On September 17, 1995, defendant

Rivas in the presence of Stephens gave a manager's check from Cooperativa de Ahorro y Crédito de Barranquitas to defendant Vázquez, said check was made payable to Margarita Sanfeliz Wu.

On September 19, 1995, defendant Vázquez opened a bank account with Smith Barney in the name of Villa Maje and deposited the above mentioned check. Several days later defendant Vázquez wired transferred eighty thousand dollars ($80,000.00) to an account in the name of Margarita Sanfeliz Wu. After several calls from Margarita Sanfeliz Wu and from John Stephens who were trying to obtain the remaining $20,000.00 from Vázquez defendant Stephen, pursuant to instructions from Rivas, issued a check from J.P. Stephens Associates, Inc., for $20,000.00 payable to Urbanística, Ltd. A company owned by Margarita Sanfeliz Wu.

*11 In order to conceal the one hundred thousand dollar payment defendants Vázquez and Sanfeliz Wu drafted a document that falsely stated that Sanfeliz Wu had done work for defendant Vázquez for a total amount of one hundred thousand dollars. All in violation of Title 18, United States Code, Section 1956(h).

Mrs. Candida Rodriguez Larrendowtte was assistant to the Executive Director of CRIM Mr. Eduardo Burgos Lebrón. Pleaded guilty to charge number eighteen (18) of the indictment submitted by the Federal Grand Jury (Conspiracy to Commit Money Laundering, 18 USC, 1956(h).

Particularly admitted to the following facts, by virtue of the agreement with the Federal Prosecutors' Office:

During the time frame of this conspiracy defendant Candida Rodriguez received approximately

$76,000.00 fro defendant Eduargo Burgos Lebron who was receiving the monies from co-defendants Habibe, Sr., and other members of the consortium.

On or about December 5, 1998, defendant Habibe, Sr., deposited $40,000.00 into a checking account in the name of Active Consultant, Inc. for the purpose of making contributions to the New Progressive Party from which Cándida Rodríguez benefited from.

On or about January 27, 1998, defendant Habibe, Sr., provided to defendants Eduardo Burgos Lebrón and Cándida Rodriguez access to the checking account was in the name of Active Consulting, Inc. On that same day Eduardo Burgos and Cándida Rodríguez withdrew approximately $39,979.17 using a third party previously designated by them to cash the checks. Defendant Cándida Rodríguez knew that these monies were proceeds derived from the unlawful activities of Eduardo Burgos Lebrón.

On the other hand, Wanda Rodríguez Hernández was Director of Finance of the CRIM. Pleaded guilty in relation to charge number twelve (12) of the indictment submitted by the Grand Jury against her. (Engaging in Monetary Transaction in Criminally Derived Property, 18 USC, Sections 1957 and 2).

To this respect, she specifically admitted the following facts:

On October 6, 1995, Tommy Habibe, Sr., cashed check 5390 for $20,000.00 from his company account at Banco Santander and delivered the $20,000.00 to defendant Wanda Rodriguez Hernández. Defendant Wanda Rodriguez Hernández aided and abetted by Tommy Habibe, Sr., and Eduardo Burgos Lebrón conducted this monetary transaction of $20,000.00 knowing that the

$20,000.00 were proceeds derived from the unlawful activities of Eduardo Burgos Lebrón. All in violation of Title 18, United States Code, Section 1957 and 2.
On September 27, 2001, the CRIM presented the lawsuit in the case of the court proceedings against the members of the Consortium and its officers, alleging that the LIMS contract was void due to fraud. Afterwards, on September 27, 2001 CRIM presented Urgent Motion Requesting Preliminary Injunction and Memorandum in Support to the Preliminary Injunction. Requesting from this, that the First Instance Court issue an order of Preliminary Injunction to halt the arbitration procedure while the merits of the lawsuit were elucidated. To that effect, the First Instance Court overruled the request for Preliminary and Permanent Injunction requested by the CRIM.
***12** As a consequence, the plaintiff presented on September 26, 2001, a Bill of Complaint before this Court in order for the partial judgment of October 1, 2001 to be reviewed. By means of judgment of January 23, 2002, this Court reversed the ruling of the First Instance Court and disposed to celebrate an adversative hearing.
After several procedural proceedings, the referred to hearing was held whereby the parties summarized and argued their respective positions in an open court, after which the Court ordered that written documents be presented in support of their positions. This being the case, CRIM presented Memorandum in Support of the Injunction Request.
ENTEC, opposed the suspension of arbitration in view of the federal and puertorrican laws that govern the arbitration request.

The First Instance Court, issued a Resolution to that effect, in which it disposed the halting of the arbitration procedures before an arbitration panel, until it is elucidated before the Court the validity of the contract in controversy. To that effect, the recurrent defendant presented a Certiorari Resource on July 29, 2002 before this Court, requesting revision to the Resolution of the First Instance Court, previously mentioned.

The Consortium claims that the First Instance Court made the following four errors, namely: (1) the First Instance Court erred by unfulfilling the guidelines of this Court (FN(2) of determining if the intention of the parties when agreeing to arbitration also included the adjudication of any controversy regarding the legality and validity of the contract subject to lawsuit, (2) that the First Instance Court erred by postponing the determination regarding the validity of the arbitration clause and making a condition of a subsequent legal determination regarding the validity of the contract in which it is included. Mentioned party also alleges that the First Instance Court also fell into error when determining, for the purpose of requesting an arbitration to stop, that the arbitration clause is not separable from the contract in which it is included, but is "accessory" to the same and cannot be absolved from the contract that structures it, (3) that the First Instance Court erred when resolving that a general impugnation of the LIMS contract is enough to halt arbitration and that ruling is not inconsistent with the decision of the United States Supreme Court in, Prima Paint Corp. v. Flood & Conklin, 388 U.S. 395 (1967). As a fourth and last indication of error, the petitioners state, that the Instance Court erred when resolving

that the CRIM did not submit to the arbitration procedure and is not prevented from bringing about controversy regarding the validity of the arbitration clause.

II

Of the facts previously presented, the plaintiff pretends to establish, in essence, that there was no arbitration agreement in the case filed in court, since the contract that includes mentioned clause is null ab initio, for lack of legal cause, for the same being a product of a fraud scheme against the State by several employees that represented it in such administrative contracting in its positions as officers and several suppliers that serviced the same. As evidence of that, the plaintiff presented indictments and the guilty pleas of these, before the Federal District Court.

*13 On the other hand, the appellates state, that said accusations are not sound evidence of the contract under controversy being null, since the same deserve an independent appreciation of the facts under discussion.

On the other hand, they allege that the current claim relies on an appropriate remedy that originates from the arbitration clause agreed to between the parties, therefore, solving the current controversy is the concern of the arbitrators.

III

As the first pointed out error it is our concern to establish if the First Instance Court fell into an error upon unfulfilling with the previously mentioned guidelines of this Court, in determining if the intention of the parties upon agreeing to arbitration also included the adjudication of any controversy

that would arise around the legality and validity of the contract object of the lawsuit.

As previously mentioned, this Court in its' Judgment of January 23, 2002, requested the First Instance Court to determine if the intention of the parties upon agreeing to arbitration also included, the adjudication of any controversy that would arise around the legality and validity of the contract object of the lawsuit. Now then, this was done, within the frame of the controversy regarding the source of the requested preliminary injunction and previously denied by the First Instance Court.

In the Resolution pronounced on June 27, 2002, the First Instance Court expressed itself to this effect, and due to its' importance we quote extensively:

A detailed examination of the allegations, reveal that the impugnation of these (meaning CRIM), is not granted upon the basis of a contract that at some point came to life, by means of its adequate formality and perfection, but that it lacks a vice that invalidates it, but rather over the basis of a contract that simply never existed, without ever coming to happen to a legal life. Nothing in said jurisprudential indications signal that such position cannot coexist with the ruling met in Prima Paint, supra.

The exposed distinction is fundamental, as if the issue of the contract is its inexistence, and it is finally established as so, and the arbitration clause cannot escape that, since from a null act accessory rights cannot be derived from, consequently a party cannot be forced to arbitrate an issue, as the nullity of the contract in question is, whose elucidation could have the effect of precisely annulling the basis over which the same arbit derives jurisdiction, and who

provides the substantive matters that this would examine; that is to say, the contract in itself. Said in a different way, if there was no contract the only thing to do was to arbitrate.

Be advised to this respect, as it has been firmly established in our arrangement that ..."what is null never had any efficacy, was never legally born, never existed". (Endnotes and internal quotes omitted); (Our emphasis.)

*14 As can be appreciated, of the transcribed text of the Resolution issued by the First Instance Court, this determined that when a contract is impugnated because it was never born, that is for being null ab initio, one of the parties cannot be forced to arbitrate precisely, the nullity of the contract under discussion, under cover of an arbitration clause that is part of the contested contract. That is why, the Judge exposes in her judgment that the arbitration clause cannot escape the impugnation that the plaintiff claims of the general contract, whereas exposed by the Judge "we should interpret, that it is equally done so to the alleged arbitration clause".

Entec Corp., claims that this Court is in the same position as the First Instance Court, to determine if the alleged nullity of the LIMS contract, is arbitration matter under the arbitration clause established in said contract. In view of the facts that the appellee presents prima facie, we understand, quoting from the Resolution, that "from a null act accessory rights cannot be derived from". Therefore, the facts that bring forth the following controversy, prevents us from determining at this moment the scope that the arbitration clause has, since it is tied to the contract that includes it, before an impugnation of nullity ab initio, whose

determination corresponds to the Courts, since it can annul (if the nullity of the contract is determined), the basis of the jurisdiction of the arbitrator. Let us see.

In the referred to case, the parties agreed in the controversy of the arbitration clause, that the laws that would be applied to in case of a controversy arising with respect to the LIMS contract, would be the laws of Puerto Rico" (t)he arbitrator shall be governed by, and apply the substantive law of Puerto Rico and the findings shall be final and binding upon both the Contractor and CRIM and shall be a condition precedent to legal action—". It has been sustained by jurisprudence, that arbitration is a contractual issue. Therefore, remitting to contracting and obligations rights, the rule established in article 264 of the Civil Code, 31 L.P.R.A. sec.1044 is a fundamental principle to the effect that a contract has a legal force between the contracting parties. Thereby, our body of laws stated in title 32 of L.P.R.A. sec.3201, related to arbitration, whereas establishing that:

Two or more parties can agree in writing to submit to arbitration, in conformity with the dispositions of this Chapter, any controversy that could be object of an existing lawsuit among them at the date of the agreement of submitting to arbitration; or will be able to include in a written agreement a disposition for settling through arbitration any controversy that in the future might arise between them of said agreement or in relation to the same. Said agreement will be valid, exact and irrevocable except for the existing legal reasons for the annulment of any agreement. (Our emphasis.)

*15 Contractual arbitration can ensue from an accessory clause to a principal contract through which the parties agree to submit to arbitration their future disagreements or it can ensue from a written agreement to solve an existing controversy. Rivera v. Samaritano & Co., Inc., 108 D.P.R. 604 (1979).

It must be pointed out, that this Court is conscious, understands and totally agrees with the strong public policy that favors arbitration in controversies. Sears Roebuck and Co. v. Herbert H. Johnson Assoc. 325 F. Supp. 1338 (1979). This federal and state interest in promoting arbitration as a means of solving disputes, is likewise reflected in the arbitrability presumption when a contract has an arbitration clause. In these cases, the doubts must be solved in favor of coverage (arbitrability). Universidad Católica de Puerto Rico v. Triangle Engineering Corp., 136 D.P.R. 133, (1994).

Likewise, once arbitration is agreed to, the Courts lack discretion and must comply with the arbitration agreed to. World Films, Inc., v. Paramount Pict. Corp., 125 D.P.R. 352 (1990). (Supplied emphasis.)

In cases were an arbitration agreement have been particularly agreed to, a Court cannot release a party to comply with what was obliged to do by means of a contract, when the contract is legal and valid and has no defects. Olazabal v. U.S. Fidelity, Ect.103 D.P.R. 448 (1975). This being the case, the arbitration mechanism will be used only if the parties have agreed to and in the way that they have agreed to, World Films, Inc. v. Paramount Pict. Corp., supra.

Now then, the arbitration of controversies, that is, the determination if an agreement creates the right of the parties to submit to arbitration a particular controversy, is legal work. World Films, previously.

Together with the previously exposed, it has been established that the favorable arbitration policy is not absolute and unrestricted, since same is tied to the doctrine of the autonomy of the contracting parties as enunciated in Art.1207 of our Civil Code, 31 L.P.R.A. sec. 3372. Thence, being arbitration a contractual matter, a party cannot be obliged to submit a dispute to arbitration that said party has not agreed to, since it would violate the fundamental principle related to the will of the parties.

It is an established rule, that a contract exists upon the same moment that the parties agree to oblige. Art. 1206 of Civil Code of Puerto Rico, 31 L.P.R.A. sec.3371. According to the preceding, in order for the parties to oblige by means of a valid contract, several requirements as disposed by law, must be met, namely; parties must grant their consent, and certain object matters in said incurred obligation must exist, and of all things a cause must exist for having obliged. Art. 1213 of the Civil Code of Puerto Rico, 31 L.P.R.A. sec. 3391. To that effect, Puig Brutau comments that the contract "refers to the agreement of purpose of two or more parties for whom relations belonging to Obligations Law are created, modified or extinguished". J. Puig Burtau, Fundamento de Derecho Civil, Barcelona, Ed. Bosh, 2nd. Ed., 1978, T.2, Vol I, page 11.

***16** Now then, in the contracts, pacts, clauses and conditions to which the parties have conveniences can be established, whenever they are not contrary to the laws, to the morals and to the public order. Municipio de Ponce v. Roselló, 136 D.P.R. 776, (1994); Colegio Internacional Sek de P.R., Inc., v. Escriba, 135 D.P.R. 647, (1994); Campos del Toro v. American Transit Corp., 113 D.P.R. 337 (1982).

Our juridical code of laws disposes, that when contracts exist where causes contrary to the laws, to the morals and to the public order are established, it will be understood that the cause is illicit and therefore the contract does not produce any effect. Art. 1227 of the Civil Code of Puerto Rico, 31 L.P.R.A. 3432; Denis Metro Invs. V. City Fed. Savs. 121 D.P.R. 197, 217, (1988); Sánchez Rodriguez v. Lopez Jiménez, 116 D.P.R. 172 (1985).

For those purposes it has been determined jurisprudentially, that the cause of a contract, is the reason that prompts the debtor to oblige. C.M. & Finance Corp. v. Cooley, 103 D.P.R. 6 (1974).

For the reason previously exposed, the modern doctrine when estimating cause, admits in its' subjective slope to consider the reasons that permeated contracting.

On the other hand, it must be indicated, that the difference between cases of inexistence and of nullity of the contracts is to be found, where the first because it lacks one or more of the essential requirements, namely; consent, cause and/or object; a contract has not been raised, and therefore, they are null, while in the second case, upon concurring on the essential requirements, a contract has ensued, although it has been affected by a vice that can cause its' nullibility, which can be eliminated if said contract is confirmed.

In a contract where its' cause is illicit, the only one that has the right to restitution, is the innocent party, meaning, that party that did not have nor would have knowledge of the illicitness.

From the facts that set the present controversy it gives way to the fact that the CRIM has presented evidence that prima facie supports its allegation that

we are not before a contract with a licit cause and true subject matter, when instead it was a product of the violation of the law in all its dimensions and contrary to the public policy, both in the federal and state spheres. Evidence has also been presented to demonstrate that the LIMS contract is contrary to any public end of the State and that the interests of the State were never legitimately presented, in the negotiation of the contract alleging instead, that this was the product of a common and accorded agreement between a group of persons involved in criminal activities, with the intention to defraud the State. As a consequence before such allegation, the State is an innocent third party, whereas the scope and consequence of the contract would have to be determined. Before this allegation and evidence offering, including guilty pleas related to the contract in controversy we conclude, applying the dispositions in law and the jurisprudence previously exposed, that it is the legal forum to whom it corresponds solving the controversy related to the validity of subject contract.

***17** Now then, once this controversy is solved, if the Court reaches the conclusion that the same is valid, it should transfer subject case to the arbitrators without any delays, in order for them to solve the remaining controversies that may have risen or that may arise, which may include anywhere from collection of money alleged in the lawsuit, unto a possible allegation of nullity of the contract.

ENTEC Corp., bases its position referring to the nullity of the contract in the case in court, must be solved by the arbitrators, as decided by the Supreme Court in the case Prima Paint Corp. v. Flood & Conklyn MFG. Co. 388 U.S. 399 (1967).

Said party alleges that the validity of the arbitration contract, is not affected by annulment allegations or nullity ab initio of a contract, since the separation doctrine of the arbitration clauses prevail. It just as well alleges that if the arbitration clause is not directly challenged, a general claim of nullity of the contract must be referred to the arbitrators.

The doctrine established in Prima Paint is different from the case in court. They were before an allegation to cancel a voidable contract, not of an allegation that the contract was null ab initio, as has been presented in the case in court. Let's see.

The central controversy presented in Prima Paint turns around a determination if it corresponds to a federal court or to an arbitrator to solve an allegation of "fraud in the inducement" in a contract directed by the United States Arbitration Act of 1925, having the contracting parties established an arbitration clause. Prima Paint alleged that F&C fraudulently had represented themselves as credit-worthy and able to carry out the subscribed contract, when in truth it was insolvent and was thinking about going bankrupt under Chapter 11, which it did one week after signing the contract. F&C had notified Prima its' intention to submit the issue to arbitration. In its' lawsuit before the New York District Court, Prima requested the cancellation of the contract, based on "fraud in the inducement" and alleged that the Court had jurisdiction concurrently with the arbitration court to solve its' allegation. Nevertheless, the court decided to halt the legal action until the arbitration procedure was finalized, since it argued that an allegation to "fraud in the inducement" of a contract that had an arbitration clause as extensive as the mentioned contract had,

was a matter to be solved by arbitrators, and not by the legal court.

It is evident, that in the case of Prima Paint v. Flood & Conklin Mfg. Co., when alleging "fraud in the inducement of the contract generally", what was put forth, was not the nullity ab initio of the contract, but rather its' annulment. Sure enough, Prima Paint decides nothing in so far as allegations of what in common legal terms is known as "fraud in the execution of the contract" that sets into controversy the existence in itself of the contract; what would be the equivalent in the puertorrican legal ordinances in reference to obligations and contracts, as a null ab initio contract. Thus, the ninth circuit, in the case, Southwest Administrators, Inc. v. Rozay's Transfer, 791 F. 2d 769, 774 (9th Cir. 1986), exposes that, the lack of an effective consent in relation to a contract, is what the contracts theory under the common laws knows as "fraud in factum" or "fraud in the execution". This theory differs from what is known over there as "fraud in the inducement". The "fraud in factum" or "fraud in the execution" makes the contract null ab initio, on the other hand, the "fraud in the inducement", alleged in the case of Prima Paint, makes the contract null. Southwest Administrators, Inc., supra defines both terms as follows:

*18 (Fraud in the Inducement) induces a party to assent to something he otherwise would not have; (fraud in factum or fraud in execution) induces a party to believe the nature of his act is something entirely different that it actually is".

Federal jurisprudence, has made a clear distinction between what is an allegation of an annullable contract and an allegation of a contract null ab initio.

To those ends, the Ninth Circuit of the United States, in the case Three Valleys Mun. Water Dist. V. E.F. Hutton & Co., 925 F. 2d 1136 (1991), explains the following: "(w)e read Prima Paint as limited to challenges seeking to avoid or rescind a contract—not to challenges going to the very existence of the contract that a party claims never to have agreed to" (our emphasis).

This Court examined in detail and in a minutely precise manner all the federal jurisprudence relating to the controversy in court. From the same it ensues, that the fifth circuit of the United States, is practically alone in applying the separability doctrine of the arbitration clause established previously in Prima Paint, to the contracts that allegedly are null ab initio. Nonetheless, even in said circuit a concurrent opinion submitted in Prima Life Insurance Co. v. Brown, 304 F. 3d 469 (5th, Cir. 2002), whose controversy turned around a contract subscribed with a lame duck, who under the laws of Mississippi are nullible contracts and not null ab initio, exposed that:

"I note that this circuit has not considered the authority of other circuits applying the Prima Paint, rule to the distinction between voidable and those contracts deemed not to have existed. We have decided that the question of whether a contract as a whole was illegal, must be submitted to arbitration. But we have not yet thoroughly analyzed or squarely decided whether challenges going to the very existence of a contract must be submitted to arbitration."

Adhering unto the current doctrine in our ordinance, an annullable contract is a contract that since its beginning was born inefficiently, albeit with a

limping efficacy, because it is in itself subject to the possible exercise of a nullity action or impugnation. The annullable contract, according the Vélez Torres, in his book, "Derecho de Contratos ("Contract Rights"), (FN(3), is born and functions, but if it is impugnated, in a reasonable time, it is destroyed and this destruction has retroactive effects. On the other hand, a null contract ab initio, is one that upon declaring it as such, cannot meet its purpose, due to either because it is contrary to the laws, to the morals or to the public order or because as previously mentioned, one of its essential elements is missing. A null contract produces no effect, since the same only exists in an empty appearance...

Summarizing, the petitioner party in the current case alleges, that the controversy referring to the allegation of nullity ab initio of the LIMS contract, must be referred to the arbitrators, since said nullity allegation, is pertinent to the contract in general and does not directly challenge the arbitration clause, therefore, as alleged, this should live on, by the separability doctrine. Reason does not help it. In the case before court, the controversy revolves around an absolute nullity ab initio allegation addressed to the contract in general including the arbitration clause.

*19 For all the reasons listed previously we conclude, that the First Instance Court did not fall into this first error as indicated by the petitioners.

IV

In its' second error designation, the petitioning party states that the First Instance Court erred when it postponed the determination regarding the validity of the arbitration clause and conditioning it to a subsequent judicial determination regarding the validity of the contract that includes it. It

understands that the court had an effect when it also determined, for the purpose of halting an arbitration request, that the arbitration clause is not separable from the contract in which it is included, when instead it is accessory to the same and cannot be unbinded from the contract that rules it. As a third error designation, said party indicates that the First Instance Court erred when solving that a general impugnation of the LIMS contract is enough to stop arbitration and that ruling is not inconsistent with the decision of the United States Supreme Court in Prima Paint Corp. v. Flood & Conklin, 388 U.S. 395 (1967).

Since the discussion of these two errors are intimately related, we discuss both errors as a whole. Let's see.

The LIMS contract as we know, the recurring plaintiff alleges to be null ab initio for having an illicit cause, for the same having been generated in a fraud frame, does not contain a separability clause that can save the arbitration clause before an allegation of absolute nullity of the general contract, in order for the case to be submitted in this manner to an arbitration court.

We must emphasize, that as much as the federal jurisprudence of our own Supreme Court jurisprudence has established that the arbitrability of a controversy, that is, the determination that if an agreement creates the right of the parties to arbitrate a particular cause, is a legal duty. World Films, Inc., v. Paramount Pictures Corp., supra; Crufon Construction v. Autoridad de Edificios Publicos, previously, Three Valley Municipal Water District v. E.F. Hutton and Co., 925 F. 2d 1136 (9th Cir. 1991) which summarizes the doctrine to these

effects and distinguishes Prima Paint, supra and Unionmutual Stock Life Ins. Co., v. Beneficial Life Ins. Co. 774 F.2d 524 (1st Cir.1985), which exposes:
"We do not read Prima Paint so broadly. The plaintiffs in Rhoads v. Powell, 664 F. Supp. 645 (E.D. Cal. 1986) and Unionmutual did not challenge the making of a contract, but sought to rescind a contract that admittedly existed..."
If the dispute is within the scope of an arbitration agreement, an arbitrator may properly decide whether a contract is "voidable" because the parties have agreed to arbitrate the dispute. But, because an "arbitrator's jurisdiction is rooted on the agreement of the parties", a party who contest the making of a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of the existence of an agreement to arbitrate. Only a court can make the decision. (Emphasis supplied.)
***20** As we see, from the previously exposed quote, that there exists a clear distinction between null contracts and annullable. This doctrine firmly concludes that the dispute regarding an allegation of a contract null ab initio or inexistent as is in the referenced case, can only be solved in the Courts.
Stepping in depth into the distinction that the federal jurisprudence makes, between the effects that an allegation of an annullable contract and a null one, the third circuit Court of Appeals of the United States, in the case Sphere Draker Insurance Limited v. All American Insurance Co., 256 F.3d 587, 590-91 (7th Cir.2001) expressed to the effect that:
"Fraud in the inducement does not negate the facts that the parties actually reached an agreement. That's what was critical in Prima Paint. But

whether there was any agreement is a distinct question. Chastain v. Robinson-Humphrey Co., 957 F. 2d 851 (11th. Cir.1992) sensibly holds a claim of forgery must be resolved by a court. A person whose signature was forged has never agreed to anything. Likewise, with a person whose name was written on a contract by a faithless agent who lacked authority to make the commitment. This is not a defense to enforcement, as in Prima Paint; it is a situation in which no contract came into being; and as arbitration depends on a valid contract an argument that the contract does not exist can't logically be resolved by the arbitration (unless the parties agree to arbitrate this issue after the dispute arises). It must be said, that the Federal District Court has applied with approval the doctrine in the case Three Valleys Municipal Water District v. E.F. Hutton and Co., supra. Lets' see. In Rivera v. Clark Melvin Securities Corp., 59 F.Supp.2d 297 (DCPR 1999) the Court decided that a case in which the essence in itself of the arbitration clause and the contract in which it is included was debated, has to be solved by the courts. Page 304. In Rivera, the federal court makes reference to other Federal Circuit Courts that apply the doctrine of Three Valleys, supra, and explains the distinction between the cases in which absolute nullity of the contract in which it includes the arbitration clause, is alleged and the Prima Paint decision, previously. In so doing, it refers to the following:

"Several courts have held that when a party contests the making of a contract containing an arbitration provision, the party cannot be compelled to arbitrate the "threshold issue" of the existence of an arbitration agreement, but rather, the Court must

determine the existence of the agreement to arbitrate. Three Valleys Municipal Water District, 925 F. 2d 1136, 1141-42 (9th Cir.1991); see Aircraft Braking System Corp., v. Local 856 Int'l. Union, 97 F.3d 155, (6th Cir.1996) (questions of whether a valid agreement to arbitrate exists at all is answered by the court); Magallanes Investment, Inc., v. Circuit System, Inc. 994 F.2d 1214, (7th Cir. 1993) ("the existence of a contract to arbitrate (**22) is usually a threshold question for the court not the arbitrators, to decide"); Chastain v. Robinson-Humphrey Co., Inc. 957 F.2d 851,854 (11th Cir.1992)("if the validity of the agreement to arbitrate is in issue, a court, not a panel of arbitrators, must decide if the arbitration clause is enforceable against the parties"); see also MCI Telecommunications Corp. v. Matrix Communications Corp., 135 F.3d. 27,32 (1st Cir.1998) (citing Three Valleys with approval and stating "fraud in inducing acceptance of the arbitration clause unquestionably would negate the contractual agreement on that issue).

*21 These courts, particularly the Ninth Circuit in Three Valleys, distinguished this holding from the United States Court's decision in Prima Paint Corp., v. Flood & Conklin Manufacturing Co., 388 U.S. 395, 18 L.ED.2d 1270,87 S.CT.1801 (1967). Three Valleys Court pointed out that Prima Paint's holding that a federal court may consider frauds in the inducement of a contract only if the fraud specifically relates to the arbitration clause itself and not to the contract generally, is limited, 'to challenges seeking to avoid or rescind a contract not to challenges going to the very existence of a contract that a party claims never to have agreed to'. Three Valleys, 925 F.2d at 1140.

The Court finds persuasive the Three Valleys decision and other circuit cort cases with similar holdings. Any contrary rule would 'lead to untenable results.'Id. The instant case falls squarely within this holdings as Plaintiffs allege fraud and dispute the very existence of the arbitration clause and contract. Plaintiffs assert that they never signed or agreed to submit their claims to pre-dispute arbitration. The Court must decide the threshold issue of whether an agreement to arbitrate existed, and thus cannot submit this issue or Plaintiff's claim to arbitration. Id. (Emphasis supplied.)

In conclusion, with respect to the second and third error pointed out by the recurring party, it is evident that the controversy in the case in court, relating to the allegation of nullity of the LIMS contract, must be solved in the first instance court.

V

As the fourth and last error indication, the recurring defendants establish that the First Instance Court erred when resolving that the CRIM did not submit to the arbitration procedure and it is not prevented from sustaining controversy over the validity of the arbitration clause. Let's analyze.

According to the recurring party, CRIM not only actively participated in the previously initiated arbitration procedure, but it also participated in the preparation of the imposed arbitration clause in the referenced contract. Said party also alleges that said conduct prevents the CRIM for questioning now the validity of contract as well as of the arbitration clause which is included in the same.

Regarding the participation of the CRIM in the previously initiated arbitration procedure, from the court proceedings it can be seen that as early as May

21, 2001, a couple of months after the change in government for January of that year, CRIM appeared before the arbitration panel and informed through its new legal representative that it was evaluating if the contract subject to controversy had been obtained through fraud by the preceding officers, in conspiracy with officers of ENTEC, CEPI and HLRA. Thus, CRIM alleges that the arbitrators were informed that the former Executive Director for CRIM had pleaded guilty to 3 federal charges for which he had been indicted. Said party just as well alleges, that the arbitrators were notified of the admissions made by Mr. Burgos while at the same time requested a suspension of the procedures for 45 days. Said request was denied by the arbitration panel. As a consequence, arbitration was subpoenaed to start arbitration on July 15, 2001.

***22** The guilty pleas by the persons who compose the recurring defendants, specially that of Mr. Burgos, for acts that constitute criminal ones, under the federal laws as well as under the state laws, related to the referred contract and to the referred arbitration in course, as well as the public interest considerations that it entails, state an evident substantial change of scenery in the referred to case in reference to the CRIM's participation in the previously alluded arbitration procedure.

That change of scenery of the facts of the case in court entails that the allegation of the nullity of the contract, based essentially in the described indictments and guilty pleas and acknowledging a controversy with a high public interest, in which it is alleged that the conspiracy to defraud the State started much earlier than the signature of the contract, from the preparation of the bids request,

what proceeds is for the court to rule the validity or nullity of the contract. Well then, can rights of illegal acts be derived, that led to subscribe the LIMS contract? We conclude as not.

In addition to the preceding, it is necessary to clarify that CRIM had submitted voluntarily to the arbitration procedure when the officers of the CRIM and the Consortium, had not yet pleaded guilty and that later they pleaded guilty for events related to the implementation of the LIMS project in Puerto Rico. It is a reiterative rule that as an appeals court, in relation to the appreciation of the documentary evidence, we are in the same conditions as the First Instance Court. Caribbean Petroleum Company v. Departamento de Hacienda, 134 D.P.R. 861,(1994); Díaz García v. Aponte Aponte, 125 D.P.R. 1,13 (1989); Ortiz v. Cruz Pagán, 103 D.P.R. 939, 947-948, (1975).

Thus, it must be clearly stated that the Court has examined the present evidence, with the sole purpose of determining the source of the preliminary injunction requested by the recurring party and awarded by the First Instance Court.

Therefore, it must not be interpreted in any way that the analysis performed by this Court has pre-judged the facts in the case in reference.

On the other hand, Rule 57 of Civil Procedures, 32 L.P.R.A. Ap. III R. 57, governs the general procedures, related to injunctions in Puerto Rico. The preliminary injunction is ruled by Rule 57.1, 32 L.P.R.A. Ap. III R. 57.1. The Supreme Court, in interpretation of this rule, has expressed that the preliminary injunction is a temporary provision whose principal purpose is to keep the status quo until trial by its' merits is held, preventing in this

manner that the conduct of the defendant can produce a situation in which the final judgment that is ruled turns into an academic one, or that further damages of greater consideration may be caused to the petitioner over the length of the trial. Cobos Liccia v. Dejean Packing Co., Inc. 124 D.P.R. 896 (1989). See as well, Hernández Colón, Rafael. Derecho Procesal Civil ("Civil Procedural Laws"), 3era ed. ("3rd. Edition") Michie de Puerto Rico, San Juan, 1997 to page 417.

***23** It has been resolved as well in countless occasions, that the bestowal of an injunction rests in the sound discretion of the Court, which is why in appeal its bestowal or denial will not be revoked in absence of discretionary abuse. Delgado v. Cruz 27 D.P.R. 877, (1919). It can only be granted very cautiously and in clear cases. Fajardo Sugar Growers Assoc. Kraner, 45 D.P.R. (348 (1933). Nonetheless, it must be pointed out that the issuance of an injunction to protect a dubious, not known or controversial right, does not proceed. It must be proven thence, that the acts of the defendant undermines or damage the right that the plaintiff is interested in protecting through the injunction, or that may harm or hurt him in a substantial way. Hernández Colón, Rafael, supra.

On the other hand, it has also been pointed out, that the traditional duty of this type of injunction is to prevent damage, which is why the plaintiff must demonstrate that in absence of a remedy, damage is imminent. Cuevas Segarra, José A., Práctica Procesal Puertorriqueña: ("Puertorrican Procedural Practice") Procedimiento Civil, Publicaciones JTS, San Juan, 1989, to page 386. It is a reiterative rule that a Court must take into consideration several

requirements at the time of determining if it is going to issue or not a preliminary injunction, namely: (1) the nature of the damages that can be made to parties if the injunction is or not awarded; (2) its irreparability or the existence of an adequate remedy in law; (3) the probability that the plaintiff eventually prevails when the lawsuit is resolved in court; (4) the probability that the cause of action becomes academic if the injunction is not granted; and of all things, (5) the possible impact over the public interest of the requested remedy. Misión Industrial v. Junta de Planificación, 142 D.PR. 656, (1997); Mun. de Ponce v. Roselló, 136 D.P.R. 776, (1994); Cobos Liccia v. Dejean, supra.

Having applied the preceding judicial principles to the facts of subject case, we have to mandatorily concur with the ruling of the First Instance Court, to the effect of the source of the ordered injunction remedy.

Therefore, the requested certiorari is issued and the recurred resolution of the First Instance Court is confirmed.

Agreed to and sent by the Court and certified by the General Secretary.

Aida Ileana Oquendo Graulau
General Secretary

FNFN(1) The accrediting documents of the aforesaid guilty pleas and of the agreements that were met to those effects by the concerning parties, as established in the Resolution of the First Instance Court, were supplied by means of an "Informative Motion" by the plaintiff, on June 19, 2002 to the First Instance Court.

FNFN(2) See Judgment of the Appeals Circuit Court of January 23, 2002 in the case Centro de Recaudaciones de Impuestos Municipales v. ENTEC Corporation. KLAN0101282, to page 41, where this Court revoked the appealed ruling by then, and returns the case so that the Instance Court holds an evidentiary hearing and determines if the granting of a request for preliminary injunction proceeds or not. To those effects, this Court points out that it is inevitable that said court (Instance) interprets if the intention of the parties when agreeing to arbitration included, also, the adjudication of any controversy that would arise in relation to the legality and validity of the contract object of the lawsuit.

FNFN(3) José Ramón Vélez Torres, Derecho de Contratos ("Contracts Law"), 1ra ed., (1st. Ed.), Universidad Interamericana, Faculta de Derecho, 1997.

TCA, 2002
Centro de Recaudaciones de Ingresos Municipales (CRIM) v. Entec Corporation
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PAGE 01

**COMMONWEALTH OF PUERTO RICO**
**FIRST INSTANCE COURT**
**SAN JUAN PART**

CRIM
PLAINTIFF CASE NO. K PE2001-2012
VS. ROOM: 0603
ENTEC CORPORATION
DEFENDANT

SPECIAL PROCEDURES
GROUNDS/CRIME

ATTY. DAPENA GUERRERO RAMON E.
GOLDMAN ANTONETTI & CORDOVA, PSC
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SAN JUAN PR 00936-8364

NOTICE OF JUDGMENT

THE SECRETARY THAT SUBSCRIBES NOTIFIES YOU THAT THIS COURT HAS PRONOUNCED JUDGMENT ON THE CASE IN THE HEADING DATED DECEMBER 7, 2005, THAT IT HAS BEEN DULY REGISTERED AND FILED IN THE COURT PROCEEDINGS OF THIS CASE, WHERE YOU CAN BE INFORMED IN DETAIL OF THE TERMS OF THE SAME.

AND, BEING OR REPRESENTING THE INJURED PARTY BY THE JUDGEMENT, OF

WHICH AN APPELLATE RECOURSE CAN BE ESTABLISHED, HAVING FILED IN THE COURT PROCEEDINGS OF THIS CASE COPY OF IT DATED DECEMBER 13, 2005.

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SAN JUAN, PUERTO RICO, ON DECEMBER 13, 2005

ATTY. REBECCA RIVERA TORRES
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SECRETARY
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BY: GLORIAM MARTINEZ RIVERA
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ASSISTANT SECRETARY

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**COMMONWEALTH OF PUERTO RICO**
**FIRST INSTANCE COURT**
**SUPERIOR COURT OF SAN JUAN**

| | |
|---|---|
| CENTRO DE RECAUDACIONES DE INGRESOS MUNICIPALES<br><br>Plaintiff<br><br>v.<br><br>ENTEC CORPORATION, CONSULTA ECONOMICA Y PLANIFICACIÓN, INC.; BY ITSELF AND IN REPRESENTATION OF HÉCTOR LUIS RIVAS Y ASOCIADOS IN THE LIMS CONTRACT, HÉCTOR LUIS RIVAS & ASSOCIATES; TOMMY HABIBE ARIAS; TOMMY HABIBE VARGAS, HIS WIFE MRS. DE HABIBE VARGAS AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; HÉCTOR LUIS | CIVIL NO.<br>KPE2001-2012<br>ROOM 603<br><br>RE: |

RIVAS COLON, HIS WIFE MRS. RIVAS COLON & THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; JOHN PAUL STEPHENS REXACH, HIS WIFE MRS STEPHENS REXACH AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; EDUARDO BURGOS NEGRÓN, HIS WIFE MRS. BURGOS NEGRÓN AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; CÁNDIDA RODRIGUEZ LARRENDOWTTE; WANDA RODRIGUEZ HERNÁNDEZ; BERNARDO NEGRÓN MONTALVO, HIS WIFE MRS. NEGRÓN MONTALVO AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; CARLOS SERRA VELEZ, HIS WIFE MRS.

DECLARATORY JUDGMENT,
PRELIMINARY INJUNCTION,
PERMANENT INJUNCTION,
NULLITY OF CONTRACT,
LAW AGAINST ORGANIZED CRIME AND DAMAGES

SERRA VELEZ AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; MARGARITA SANFELIZ WU, HER HUSBAND BENJAMIN WU AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; HABIBE ENTERPRISES, INC.; ACTIVE CONSULTING, INC. ; HABIBE COMPUTER CORP. (today known as VENTURE TECHNOLOGIES CORP.; GEOTEL, INC. (formerly known as WOOLPERT PUERTO RICO, INC.; and its stockholders, among others.

Defendants

**PARTIAL SUMMARY JUDGMENT**

During a follow-up hearing held on May 18, 2005, the parties and the Court discussed the

desirability and pertinence to resolve through summary procedure the controversy regarding the nullity of the contract involved in this lawsuit, known as the contract for the "Land Information Management Sytems" or the LIMS contract, granted between the Centro de Recaudación de Ingresos Municipales (CRIM) and three entities known as Entec Corporation (Entec), Consulta Económica y Planificación (CEPI), Héctor L. Rivas and Associates (HLRA) for the digitalization of the land registry of Puerto Rico whose contract exceeded $56 million dollars. The plaintiff party, CRIM, requested 30 days to submit its request in writing and the Court granted the same terms to the defending party to oppose the request of the CRIM.

On June 30, 2005, CRIM filed its' "Motion Requesting Summary Judgment Declaring Null *Ab Initio* the LIMS Contract and the Restitution of

Illegally Collected Money, plus Interest". The plaintiff submitted an extensive and well documented writing, with sixty-one (61) attachments consisting of, among others, certified copies of the guilty pleas of thirteen indictments, in documents entitled "Plea Agreement" or "Plea and Cooperation Agreement", in the federal case of U.S. v. Bernardo Negrón, et al, Federal District Court for the District of Puerto Rico, Criminal No. 00-660. This federal criminal case is related, precisely, with violations to federal legal dispositions perpetrated before, during and after signing and executing the LIMS contract. Of the thirteen guilty pleas, five are from high-ranking officers of the CRIM, in duties at the moment of planning, bidding and signing the LIMS contract. These five former public employees, convicted of federal felonies are: Mr. Eduardo Burgos Negrón, former Executive Director of the

CRIM; Mrs. Margarita Sanfeliz Wu, Advisor to the CRIM for the LIMS Project; Mr. Carlos Serra, Member of the Governing Board of the CRIM; Mr. Bernardo Negrón, President of the Governing Board; Mrs. Cándida Rodriguez, Assistant Director to the CRIM; and, Mrs. Wanda Rodriguez, Director of Finance of the CRIM. Also, principals of ENTEC and CEPI also admitted guilty pleas of federal felonies in the referred criminal case of U.S. v. Bernardo Negrón, et al, whose agreements to do so are part of the summary judgment of the CRIM. CRIM also included with its' request, checks payable to Benjamin Wu, husband to Margarita Sanfeliz, submitted by CEPI. As we will see further on, Mr. Wu pleaded guilty to perjury in the case U.S. vs. Bernardo Negrón, for having lied to the Federal Grand Jury when indicating that he had a legitimate contract with CEPI, knowing that it was false and

that payments received by him were kickback payments for his wife Margarita Sanfeliz, while she was advisor to the CRIM for the LIMS project. From this judgment arise other documents submitted by the CRIM in support of its' request.

The defendants ENTEC, CEPI, Tommy Habibe Arias, (Sr.), Tommy Habibe Vargas, (Jr.), his wife Elba Milagros Burgos, Habibe Enterprises, Inc., Geotel, Inc. (formerly known as Woolpert Puerto Rico, Inc.), Venture Technologies Corp., (formerly, Habibe Computer Corp.) and Creative Consulting, Inc. (formerly known as Active Consulting, Inc.), in two occasions requested extensions of time to submit its' opposition to the summary sentence motion of the CRIM, whose extensions of time were granted by this Honorable Court. The last of them with due date of September 20, 2005. Nonetheless, to the date of this judgment no opposition has been filed by the

previously referred defendants nor by any of the remaining co-defendants, namely, Bernardo Negrón, Carlos Serra, their wives and their legal community of properties and Margarita Sanfeliz, active codefendants in this lawsuit, since the remaining co-defendants were inscribed with contempt of court or admitted to bankruptcy proceedings. Being in a position to resolve the request of the CRIM, we proceed to do so.

**DETERMINATION OF FACTS**

1. On July 20, 1995 Mr. Eduardo Burgos and Entec, CEPI and HLRA, (hereinafter, jointly, the Consortium), signed an Agreement. ("Agreement")[1]

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[1] CRIM and the co-defendants appearing in court in the "Motion to Comply with Order" of December 17, 2003 stipulated admissibility the "Agreement", among others, so that the Court would offer the importance that it believes was pertinent. (See, Motion in Compliance of Order, page 7, number 1). The co-defendants appearing in court in said motion were: Entec, CEPI, Tommy R. Habibe Arias (Sr.), Tommy O. Habibe Vargas (Jr.), his wife Elsa Burgos, Habibe Enterprises, Inc., Habibe Computer Corp. (today, Venture Technologies Corp.), Geotel, Inc. (previously Woolpert Puerto Rico, Inc.). See, Motion to Comply with Order of December 17, 2003. The Court has

(hereinafter the LIMS contract) through which the CRIM contracted the Consortium for the design, development, installation and implementation of a digitalized land registry system known as "Land Information Management System" (hereinafter LIMS). The agreed amount for performing this project was $56,042,352. HLRA was inscribed with contempt of court by means of order submitted and notified on February 26, 2003 and CEPI and ENTEC answered the lawsuit and its two subsequent amendments.

2. CRIM was represented in said agreement by its' former Executive Director, Mr. Eduardo Burgos, who was indicted, and subsequently, pleaded guilty in the case of U.S. v.

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granted the pertinent importance upon deciding the summary judgment motion of the CRIM, taking also into consideration that they were not rebutted by said defendants, since these did not oppose the request of the CRIM.

Bernardo Negrón, et als., Criminal No. 00-660 USDC for related federal felonies, precisely with the LIMS project.

3. On August, 2002, the federal government indicted 18 persons of federal felonies all of them related, precisely with the LIMS contract, as it ensues from the Indictment[2] that accompanies the Request for Summary Judgment of the CRIM.

4. Among the indicted are the following, **all** of whom pleaded guilty to federal felonies of a serious nature. Let's see:

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[2] CRIM and the co-defendants appearing in court in the "Motion to Comply with Order" of December 17, 2003, stipulated the authenticity of multiple documents attached to the Summary Judgment of CRIM, were among them is the Indictment. The position of the co-defendants appearing in court in said motion, this is, the defendants mentioned in footnote 1, is to the effect that these documents are irrelevant in the controversy regarding the nullity of the LIMS contract. (See Motion to Comply with Order, page 2, number 1.) Nevertheless, for the reasons stated in the legal conclusions, the objected evidence for being irrelevant is admissible and pertinent.

a. Mr. Eduardo Burgos, Executive Director to the CRIM at the time of structuring the process that led to the granting of the LIMS project, including bids, negotiations and the signature of the LIMS contract. He pleaded guilty to two federal felonies[3] and was sentenced to 24 months and two years on parole.

b. Mrs. Margarita Sanfeliz Wu, Her, and her entity by the name of Urbanística Ltd., were under contract with CRIM since July 1994, thirteen months before signing the LIMS contract, until March 2000. This ensues from the contracts between CRIM and Margarita Sanfeliz.[4] In particular CRIM contracted Mrs. Sanfeliz so that she would provide

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[3] See "Plea and Cooperation Agreement", footnote 2 regarding stipulation of authenticity and Motion to Comply with Order, page 2, number 2(c).

[4] See footnote 1 regarding stipulation of admissibility of the contracts between Margarita Sanfeliz and CRIM and Motion to Comply with Order, page 7, 48(a)-48(g).

**all** the technical assistance in preparing the "Request for Proposal" (hereinafter RFP) of the digitalization of the land registry project, who later became known as the "Land Information Management Systems" (LIMS). Mrs. Margarita Sanfeliz was, also, the President of Urbanística, LTD, a corporation organized under the laws of the State of Virginia, whose corporation was controlled by Margarita Sanfeliz and/or her husband Mr. Benjamin Wu. This ensues from section 20 of the Second Amended Lawsuit and Answer of Margarita Sanfeliz, admitting to said allegation. Margarita Sanfeliz Wu pleaded guilty to two felonies.[5] She was sentenced to 30 months in prison and three years on parole.

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[5] See "Plea and Cooperation Agreement", footnote 2, regarding stipulation of authenticity of this document, and Motion to Comply with Order", page 2, number 2(a).

c. Mr. Carlos Serra, Member of the Board of Directors of the CRIM from 1993 to 2000, as admitted to in the Answer to Amended Lawsuit of Mr. Serra. Mr. Serra was also member of the Evaluating Committee for the LIMS contract, together with Mr. Bernardo Negrón, former president of the Board of Directors of the CRIM. Mr. Carlos Serra pleaded guilty to one federal felony.[6] He was sentenced to two years on parole.

d. Mr. Bernardo Negrón, President of the Board of Directors of the CRIM since 1993 until June 26, 1998, under whose presidency the LIMS contract was created, negotiated, bidded and subscribed. Mr. Bernardo Negrón pleaded guilty to

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[6] See "Plea Agreement", footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 2, number 2(d).

two federal felonies.[7] He was sentenced to 33 months in prison and two years on parole.

e. Mr. Benjamin Wu, Husband to Margarita Sanfeliz. He pleaded guilty to perjury.[8]

f. Mr. Tommy Habibe Arias (Habibe, Sr.), Principal of Entec at the time of the LIMS contract, as it ensues from the LIMS contract signed by Habibe, Sr. On February 1996, Mr. Habibe, Sr., acquired the stocks of CEPI from the heirs of Mr. Nelson Soto, who died on January 1996, in accordance with a Contract of stocks acquisition of CEPI by Mr. Habibe, Sr. Also, in November 1996 Entec acquired the responsibilities and obligations of HLRA in the LIMS contract, as ensued by the

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[7] See "Plea Agreement, footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 2, number 2(e).

[8] See "Plea Agreement, footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 2, number 2(b).

Agreement[9] between HLRA and Entec. This was the way by which Mr. Tommy Habibe, Sr. and his son Habibe, Jr., became the principals and/or owners of the three corporations that composed the Consortium in charge of performing the contracted duties with the LIMS contract; namely, Entec, CEPI and HLRA. Mr. Habibe, Sr., pleaded guilty to one federal felony.

g. Mr. Tommy Habibe Vargas (Habibe, Jr.), President and stockholder of Entec, whom pleaded guilty to one felony in U.S. v. Negrón, Crim. No. 00-660.[10]

h. Mr. John P. Stephens Rexach, worked as associate and business partner of Mr. Héctor Luis Rivas, whom at the same time was the

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[9] See "Plea Agreement, footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 6, number 45.

[10] See "Plea and Cooperation Agreement", footnote 1, regarding the stipulation of admissibility of this document, and "Motion to Comply with Order", page 8, number 50.

president of HLRA. This ensues from the contract between Entec and HLRA, signed by Mr. Stephens Rexach as Vice President of HLRA. He pleaded guilty to one felony in U.S. v. Negrón, Crim. No. 00-660.[11]

i. Mrs. Cándida Rodriguez, former assistant to former Executive Director of the CRIM, Mr. Eduardo Burgos, as per certified copy of the "Plea and Cooperation Agreement"[12] by means of which Mrs. Cándida Rodriguez pleaded guilty to one federal felony in U.S. v. Negrón. She was sentenced to 22 months in prison and 3 years on parole.

j. Mrs. Wanda Rodriguez Hernández, former director of the Finance

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[11] See "Plea Agreement", footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 2, number 2(f).

[12] See "Plea and Cooperation Agreement", footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 2, number 2(g).

Department of the CRIM, pleaded guilty to one felony, as is evident by certified copy of the "Plea Agreement"[13] of Mrs. Wanda Rodriguez. She was sentenced to 12 months and one day of prison and 2 years on parole.

k. Mrs. Haydeé Figueroa Guzmán, Secretary to Bernardo Negrón, mayor of Villalba and President of the Governing Board of the CRIM. She pleaded guilty to one felony in U.S. v. Negrón, as exposed in the certified copy of the "Plea Agreement" of Mrs. Haydee Figueroa.[14] She was sentenced to one year on probation.

l. Mr. José Rafael Vázquez-Deynes, Attorney who was contracted by Mr. John P.

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[13] See "Plea Agreement", footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 2, number 2(h).

[14] See "Plea Agreement", footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 2, number 2(i).

Stephens, principal of HLRA, for counseling, was informed of the agreement to pay officers and agents of the CRIM in order to obtain the LIMS contract for $56 millions. He lent himself to "launder" a payment of $80,000 of the Consortium to Margarita Sanfeliz. He pleaded guilty to one federal felony, according to the "Plea and Cooperation Agreement"[15] attached to the request of the CRIM. He was sentenced to 36 months on probation.

m. Roberto Roca Buidas, through Mr. Roca, Habibe, Jr., paid $50,000.00 to Margarita Sanfeliz. He pleaded guilty to perjury for saying to the Grand Jury that he did not know why Habibe, Jr., was going to pay Margarita Sanfeliz, when indeed he did know, as ensues from the "Plea

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[15] See "Plea and Cooperation Agreement", footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 2, number 2(j).

Agreement.[16] He was sentenced to one year on probation.

n. Guillermo Colón, constructed a gazebo in the home of Eduardo Burgos, for which Héctor Rivas paid. He lied to the Grand Jury upon declaring that Eduardo Burgos paid him in cash for constructing said gazebo, as ensues from the "Plea Agreement".[17] He pleaded guilty to perjury. He was sentenced to one year on probation.

5. On his part, Mr. Luis Vázquez Velázquez was indicted of perjury. According to the Indictment, Mr. Vázquez Velázquez made checks for $10,000 payable in "Cash", which were to buy a vehicle for Bernardo Negrón and later paid the

[16] See footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 2, number 2(l).

[17] See footnote 2 regarding stipulation of authenticity of this document and "Motion to Comply with Order", page 2, number 2(k).

vehicle in cash approximately for one year and lied to the Grand Jury about it. Also, he paid trips to Cuba to Bernardo Negrón. Mr. Vázquez complied with an alternate procedure and the Government of the United States requested the dismissal of charges without prejudice, when Mr. Vázquez was nearing the completion of the program. All of this ensues from the "Motion of the U.S. Government Requesting Dismissal Without Prejudice", that appears in court.

6. The respective facts admitted by the previously referred to fourteen (14) convicts, when pleading guilty to federal felonies, ensue from the "Plea Agreements" and "Plea and Cooperation Agreement" of each convict. All the "Plea Agreements" and the "Plea and Cooperation Agreements" refer to the specific charge(s) that each respective accused accepted and specify that the "Statement of Facts" that each accused signs and

that is tied to each respective guilty plea, is adopted by the accused and said accused agrees that the facts referred to in the "Statement of Facts" are accurate in all aspects ("accurate in every respect"), and that if they had gone to trial, the United States would have proved the facts in the "Statement of Facts" beyond all reasonable doubt. Also, the accused signs the document and acknowledges to having read the agreement and having carefully reviewed it with his attorney. Each agreement is signed by the accused and his attorney(s). The version of the facts is signed by the accused, by his attorney and a representative of the federal prosecutors' office.

7. With the previous background, we move on to relate the facts that each accused, today convicted, acknowledged as accurate and admitted that they would have been evidenced beyond any reasonable doubt by the Government of the U.S.,

upon pleading guilty to federal felonies in U.S. v. Negrón and that they ensue from their respective "Plea Agreement" or "Plea and Cooperation Agreement" that the CRIM submitted with its Request for Summary Judgment.

a. ***Mr. Eduardo Burgos***

He pleaded guilty to two felonies consisting of conspiracy in interfering with interstate commerce through extortion induced by economic fear and/or under color of official authority and of conspiracy to money laundering produced by an illegal activity, charges 1 and 18 of the indictment. As part of the facts admitted by Mr. Burgos when pleading guilty, he admitted that he participated in a conspiracy with nine persons and others, that we will immediately proceed to identify, since on or about June 1994 until on or about March 2000, in violation of the Hobbs Act, 18 U.S.C. Sec. 1951 and 1956. The members of

the conspiracy were: Bernardo Negrón, Margarita Sanfeliz Wu, Tommy R. Habibe, Mr. Tommy O. Habibe, Jr., Héctor L. Rivas, John P. Stephens, Cándida Rodriguez, Carlos Serra, Benjamin Wu, Haydeé Figueroa Guzmán and José Rafael Vázquez. He admitted that, if trial would have been held, the Government of the United States would have proved the following facts, among others:

> "In or about June, 1994, and continuing through in or about March, 2000, in the District of Puerto Rico and elsewhere, defendant Eduardo Burgos Lebrón, while serving as the Executive Director of Centro de Recaudaciones e Ingresos Municipales (hereinafter the 'CRIM'), participated in a conspiracy with Bernardo Negrón Montalvo, Margarita Sanfeliz Wu, Tommy R. Habibe, Sr., Tommy O. Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, a/k/a 'Jacko', Cándida Rodriguez Larrendowtte, Wanda Rodriguez Hernández, Carlos Serra Vélez, Benjamin Wu,

Haydeé Figueroa Guzmán, and José Rafael Vázquez, and others, to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm, in violation of Title 18, United States Code, Sec. 1951.

Essentially, defendant Eduardo Burgos Lebrón would and did request and receive sums of monies or third party services from co-defendants Tommy O. Habibe Vargas, Tommy R. Habibe Arias, and Héctor Luis Rivas, who were contractors that had obtained a $56,000,000.00 contract from CRIM related to and worked on a system for CRIM known as (the 'LIMS project') Defendant Burgos Lebrón requested and received these sums of monies or third party services, in exchange for him assisting in the approval of the contract for the LIMS project and for his approval and authorization of payment vouchers in relation to the LIMS project...

...

Between in or about September, 1995, and continuing to in or

about July, 1999, defendant Burgos Lebrón also requested and received numerous cash and check payments for his benefit, political purposes, and/or others from co-defendants Tommy O. Habibe Vargas, Tommy R. Habibe Arias, and/or Héctor Rivas Colon. Defendant Burgos Lebrón received cash payments totaling approximately $228,500.00.

In or about October, 1997, defendant Burgos Lebrón requested and received a payment totaling $49,000.00 from co-defendant Tommy R. Habibe Arias to purchase from a third party a 1997 Carver 260 motor boat that was valued at $59,995.00. Defendant Burgos Lebrón requested that the third party register the 1997 Carver 260 motor in the name of co-defendant Wanda Rodriguez-Hernández.

In or about December, 1997, co-defendant Tommy R. Habibe Arias transferred an exiting checking account at Banco Santander de Puerto Rico, San Juan, Puerto Rico, to a third party. Defendant Burgos Lebrón

> and co-defendant Cándida Rodriguez Larrendowtte designated the third party. Co-defendant Tommy R. Habibe Arias had deposited money into the account to be used by defendant Burgos Lebrón and co-defendant Rodriguez Larrendowtte. From in or about November, 1997, and continuing through to in or about May, 1999, the third party made cash withdrawals of approximately $37,500.00, and provided the cash to defendant Burgos Lebrón, who in return used part of the cash for political contributions to the New Progressive Party". (Underlined by us.)

As it can be appreciated, Mr. Burgos admitted that the previous facts were done on or about June, 1994 while serving as Executive Director of the CRIM. The contract for the LIMS project was signed by Eduardo Burgos, as Executive Director of the CRIM, on July 20, 1995. Of the admissions also ensues that the conspiracy started on or about June, 1994, and lasted until more or less March, 2000.

Therefore, as admitted by the former Executive Director of the CRIM himself, on duties at the time of signing the LIMS Contract, the conspiracy started more than a year before signing said LIMS contract and continued for more than four years, until March, 2000. The money he received was "...in exchange for him assisting in the approval of the contract for the LIMS project and for his approval and authorization of payment vouchers..."; that is, invoices or collection orders in relation to the LIMS contract. As stated by CRIM in its' Request for Summary Judgment, the facts admitted by Mr. Eduardo Burgos would be legally enough to annul *ab initio* the LIMS contract, for lack of a valid consent, for not having a legal cause and/or being illegal in its' cause and for being a contract contrary to the laws, to the morals and to the nullity of the LIMS contract.

b. ***Mrs. Margarita Sanfeliz Wu***

On February 14, 2002, Mrs. Sanfeliz appeared before the Federal Court, and under oath, pleaded guilty of, among others, to two charges of felony that were imputed in the case U.S. v. Bernardo Negrón. Charge number one, consisting in conspiring to interfere with commerce through extortion for fear of economic harm and/or under color of official authority in violation to the Hobbs Act, 18 U.S.C. 1951(a); and charge number 17, conspiracy to money laundering in violation of 18 U.S.C. 1956(a)(1)B)(i). (Exhibit 7.) When pleading guilty she accepted, among others, to the following facts:

> "In or about June, 1994, and continuing through in or about March, 2000, . . . Margarita Sanfeliz Wu, while serving as the advisor to the Board of CRIM ('Centro de Recaudación e Ingresos Municipales') participated in a conspiracy with Eduardo Burgos Lebrón, Bernardo Negrón Montalvo, Tommy R. Habibe, Sr.,

Tommy O. Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, Cándida Rodriguez Larrendowtte, Wanda Rodriguez Hernández, Carlos Serra Velez, Benjamin Wu, Haydeé Figueroa Guzmán, and José Rafael Vázquez, and others to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm, in violation of Title 18, United States Code, Sec. 1951.

Essentially, on or about July 29, 1994, defendant, Margarita Sanfeliz Wu, was hired as a consultant to the LIMS project by the Executive Director of CRIM Eduardo Burgos Lebrón pursuant to instructions of co-defendant Bernardo Negrón Montalvo. After being hired defendant Sanfeliz Wu met in Washington, D.C., with co-defendant Habibe, Jr., in order to discuss the LIMS project and requested and received from Habibe, Jr., a simple request for proposal for the LIMS project which would ensure that the CONSORTIUM

formed by co-defendants, complied with the requirements for the LIMS project.

Once the proposals were submitted, defendant Sanfeliz Wu provided the members of the Evaluation Committee an RFP (Request for Proposal) that was based on information provided by co-defendant Habibe, Jr. Defendant Sanfeliz Wu also proceeded to provide defendant Habibe, Jr. with a copy of the competitor's proposal for his evaluation. Defendant Sanfeliz Wu, then prepared an submitted a report to the Board of Directors of CRIM which recommended the proposal submitted by the CONSORTIUM, this report was prepared using the evaluation performed by co-defendant Habibe, Jr. On July 18, 1995, defendant Sanfeliz Wu provided the Board of Directors of CRIM a favorable analysis of the terms and conditions of the contract causing the award of the $56,000,000.00 LIMS contract to the CONSORTIUM.

Throughout this period of time defendant Sanfeliz Wu would request and receive sums of

monies from co-defendants Tommy O. Habibe Vargas and Tommy R. Habibe Arias, Héctor Luis Rivas and John P. Stephens who at the time were contractors working for CRIM in a system known as LIMS, in exchange for defendant Sanfeliz recommending their group for the project and once awarded the contract for her recommending the approval and authorization of the payment vouchers of the LIMS project. Because of fear of economic harm approximately $484,118.94 was paid by co-defendants to Margarita Sanfeliz Wu and her husband co-defendant Benjamin Wu. All in violation of Title 18, United States Code, Sec. 1951.

Essentially, defendant Margarita Sanfeliz Wu, received numerous cash payments from co-defendants T.H. Vargas (T.H., Jr.), T.H. Arias, Héctor Luis Rivas Colon, John P. Stephens and Roberto Roca Buigas money which he used for her personal benefit and which she shared with her husband co-defendant Benjamin Wu. As part of the method by which defendant Sanfeliz Wu would receive the

money a fake and fraudulent contract for professional services was issued between co-defendants Habibe, Jr., and Benjamin Wu, defendant Benjamin Wu would submit fake and fraudulent invoices to co-defendant Habibe, Jr., using the name of Urbanística LTD., and then a check would be issued from Habibe, Jr., to Urbanística LTD., which defendant Sanfeliz Wu would deposit into an account of her control. In addition, following instructions of defendant Sanfeliz Wu, Habibe, Jr., would issue checks directly to co-defendant Benjamin Wu. All in violation of Title 18, United States Code, Sec. 1956(h).

The money which Margarita Sanfeliz Wu received was used by her for payment of personal expenses particularly, Sanfeliz Wu used a sum of money for the purchase of a home in Virginia which she later sold in total defendant Sanfeliz Wu and her husband co-defendant Benjamin Wu received in checks and cash approximately $848,118.94 pursuant to Title 18, United States Code, Section 982(a). (Emphasis supplied.)

Of the previous admissions it also clearly ensues that the conspiracy started in June, 1994, more than a year before signing the contract for the LIMS project, on July 20, 1995. It also ensues that the conspiracy was schemed and carried out while Mrs. Margarita Sanfeliz was the person that had to serve the CRIM as advisor in the LIMS project. Another evident fact, important and admitted is that Mrs. Margarita Sanfeliz met in Washington with one of the principals of the Consortium, Mr. Tommy Habibe, Jr., to discuss the project and she received a sample of the "Request for Proposal" (RFP), that would ensure that the Consortium meets all the requirements of the LIMS project. All of this happened before signing the contract between the CRIM and the Consortium. Once the Consortium started to receive payments by the CRIM, the

payments to Margarita Sanfeliz and her husband Benjamin Wu started, among others. Margarita Sanfeliz accepted that she and her husband Benjamin Wu received approximately $484,118.94, that is, almost half a million dollars.

c. ***Mr. Carlos Serra Velez***

On March 21, 2002 Mr. Carlos Serra pleaded guilty to charge number 1 of the indictment in U.S. v. Bernardo Negrón, Criminal No. 00-660, a felony, consisting of conspiring to interfere with interstate commerce through extortion inducing to consent to economic harm and under color of official authority in violation of Hobbs Act, 18 U.S.C. sec. 1951 (a). In his "Plea Agreement" Mr. Serra accepted that the federal government would have proved the following facts, if the case would have gone to trial.

> "In or about June 1994, and continuing through in or about March, 2000, in the District of

Puerto Rico and elsewhere, within the jurisdiction of this Court, defendant Tommy Habibe Vargas, a/k/a Tommy, Jr., while serving as the President and owner of Entec Corporation, a member of the Consortium who was awarded the LIMS contract by CRIM ('Centro de Recaudaciones e Ingresos Municipales') participated in a conspiracy with Bernardo Negrón Montalvo, Eduardo Burgos Lebrón, Margarita Sanfeliz Wu, T.H. Arias, Héctor Luis Rivas, John P. Stephens Rexach, Cándida Rodriguez Larrendowtte, Wanda Rodriguez Hernández, and other to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm, in violation of Title 18, United States Code, Sec. 1951.

Essentially, Tommy Habibe Vargas would receive request for sums of money, from Eduardo Burgos Lebrón, Bernardo Negrón Montalvo, and Carlos Serra whom at the time were the Executive Director and president and member of the Board of

Directors of CRIM respectively, as well as members of the evaluating committee of the LIMS project.

On or about the dates listed below, the defendant Carlos Serra received the following payments in the amounts specified below, in consideration for the award of the LIMS project to the Consortium:

On or about January 19, 1996, defendant Carlos Serra received from co-defendant Héctor Rivas a trip to Cuba.

On or about July 3, 1996, defendant Carlos Serra received from co-defendant Habibe, Sr., two $1,000.00 check as a donation to his political committee Serra 96.

On or about August 26, 1997, defendant Carlos Serra received from co-defendant Héctor Rivas a $500.00 check made payable to "Comité PNP Corozal".

On or about May 8, 1998, defendant Carlos Serra received from co-defendant Habibe, Sr.,

two $500.00 checks made payable to "Comité Amigos Carlos Serra".

All in violation of Title 18, United States Code, Section 1951 (a).

This is, as ensued from the admission of Mr. Serra that payments received by him were in consideration for the LIMS contract to be awarded to the Consortium.

**d.** *Mr. Bernardo Negrón Montalvo*

On April 24, 2002 Mr. Bernardo Negrón Montalvo, pleaded guilty to charges numbers one and 18 of the indictment submitted against him in U.S. v. Negrón, according to certified copy of the "Plea Agreement" of Bernardo Negrón that appears before court. Charges 1 and 18 are the same charges to which Mr. Eduardo Burgos pleaded guilty and both are felonies.

Mr. Bernardo Negrón accepted to having participated in the conspiracy and, among others,

the following facts, that led him to plead guilty to the charges previously referred to:

> In or about June, 1994, and continuing through in or about March, 2000, in the District of Puerto Rico and elsewhere, within the jurisdiction of this Court, defendant Tommy Habibe Arias, a/k/a Tommy, Sr., while serving as the president of Habibe Enterprises, a member of the Consortium who was awarded the LIMS contract by CRIM ("Centro de Recaudaciones e Ingresos Municipales"), participated in a conspiracy with Bernardo Negrón Montalvo, Eduardo Burgos Lebrón, Margarita Sanfeliz Wu, Tommy O. Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, Cándida Rodriguez Larrendwotte, Wanda Rodriguez Hernández, Carlos Serra Vélez, Benjamin Wu, Haydeé Figueroa Guzmán and José Rafael Vázquez, and other to unlawfully affect

commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm, in violation of Title 18, United States Code, Sec. 1951.

"Essentially, sometime prior to June 1994, defendant Bernardo Negrón Montalvo met with contractor Nelson Soto and agreed that the CRIM's LIMS project would be awarded to Nelson Soto and his group. At the time defendant Bernardo Negrón Montalvo was the mayor of the municipality of Villalba and the President of the Board of Directors of CRIM.

On or about July, 1994, defendant Negrón Montalvo introduced co-defendant Margarita Sanfeliz Wu to Eduardo Burgos Lebrón, then Director of CRIM and informed him that she was going to be hired as a

> consultant to the LIMS project for CRIM.
>
> On or about May 1995 and following instructions of defendant Bernardo Negrón Montalvo defendant Margarita Sanfeliz Wu recommenced (sic) to the negotiating committee of CRIM that the LIMS project be awarded to the group composed by Nelson Soto, Héctor Rivas, Tommy O. Habibe Vargas, Tommy R. Habibe Arias and John P. Stephens, also known as the Consortium..." (Emphasis supplied.)

The admissions of Mr. Negrón evidence that Mr. Negrón compromised with Mr. Nelson Soto, principal of CEPI who died before the investigation and federal indictment, to grant the LIMS contract to the Consortium; when he was President of the Governing Board of CRIM. Also, he undertook the contracting of Margarita Sanfeliz by CRIM as

"consultant", whom in turn recommended the Consortium to the Governing Board of the CRIM for the LIMS project. The "Plea Agreement" of Mr. Negrón itemizes the payments that he accepted on having received "... in consideration for the award of the LIMS project to the Consortium". Said payments amount to $119,393.85, whose payments were made to him by Héctor L. Rivas, Nelson Soto, Tommy R. Habibe, Sr., and Tommy O. Habibe, Jr., principals of Héctor L. Rivas & Asociados (HLRA), CEPI, and Entec, respectively, that is, the three companies with whom CRIM contracted the LIMS project.

e. *Admissions of Mr. Benjamin Wu*

To the date of the herewith relevant facts, Mr. Benjamin Wu was the husband of Margarita Sanfeliz, as ensues from the Stipulation of Facts included in the Motion to Comply with Order, of December 17, 2003. Mr. Wu pleaded guilty to a

perjury charge for having lied to the Grand Jury. Mr. Wu had testified before the Grand Jury that he had signed a contract with CEPI. Nevertheless, that was false and Mr. Wu did not have a legitimate contract with CEPI. The truth was that "...the payments received by him were payments made to disguise kickback payments for his wife, defendant Margarita Sanfeliz...", according to the admission of Mr. Wu in certified copy of his "Plea Agreement" that remains in court. Mr. Wu accepted that CEPI paid him somewhat less than $275,000.00.

Finally, in the Motion to Comply with Order of December 17, 2004 (hereinafter MCO) the accused appearing in court and CRIM stipulated the authenticity of the following checks to Benjamin Wu, also binded as Exhibits to the CRIM's request.

(1) Copy of theck number 3 of Woolpert Puerto Rico of Banco Santander Puerto Rico, account

number 300300108 signed by Tommy Habibe to Benjamin Wu for $50,000 dated July 30, 1996. (MCO, page 3, no. 5.)

(2) Copy of check number 1067 of CEPI dated December 31, 1996 for $30,000 to Benjamin Wu of Banco Santander Puerto Rico, San Juan Branch, account number 3003001236. (MCO, page 3, no. 6.).

(3) Copy of check number 1133 of CEPI of Banco Santander of Puerto Rico, account number 3003001236, signed by Tommy R. Habibe, Sr., to Benjamin Wu of April 17, 1997 for $35,058.57. (MCO, page 3, no. 7.).

(4) Copy of check number 1145 of CEPI of Banco Santander of Puerto Rico, account number 3003001236, signed by Tommy Habibe to Benjamín Wu dated June 3, 1997 for $11,541.54. (MCO, page 3, no. 8.).

(5) Copy of check number 1156 of CEPI of Banco Santander de Puerto Rico, account number 3003001236 to Benjamín Wu date June 26, 1997 for $22,489.57, signed by Tommy R. Habibe, Sr. (MCO, page 3, no.9).

(6) Copy of check number 1175 of CEPI of Banco Santander de Puerto Rico, account number 3003001236 signed by Tommy R. Habibe, Sr., to Benjamin Wu for $11,542.00, dated August 15, 1997. (MCO, page 3, no. 10).

(7) Copy of check number 1201 of CEPI of Banco Santander de Puerto Rico, account number 3003001236 to Benjamín Wu dated November 20, 1997 for $113,458.46 signed by Tommy R. Habibe, Sr., (MCO, page 3, no. 11.)

They confirm the admissions of Mr. Wu when pleading guilty of perjury.

f. ***Admissions of Mr. Tommy Habibe Arias, Sr.***

On July 23, 2001, Mr. Tommy Habibe Arias (Sr.) pleaded guilty in relation to charges numbers 1 and 18 of the indictment in the case of U.S. v. Negrón. These are the same charges for which Mr. Burgos Lebrón pleaded guilty. From the certified copy of the "Plea and Cooperation Agreement" of Mr. Tommy Habibe, Sr., ensues that he accepted, among others, to the following facts:

> "In or about June 1994, and continuing through in or about March, 2000, in the District of Puerto Rico and elsewhere, within the jurisdiction of this Court, defendant Tommy Habibe Arias, a/k/a Tommy, Sr., while serving as the president of Habibe Enterprises, a member of the Consortium who was awarded the LIMS contract by CRIM ('Centro de Recaudaciones e Ingresos Municipales'), participated in a conspiracy with Bernardo Negrón Montalvo,

> Eduardo Burgos Lebrón, Margarita Sanfeliz Wu, Tommy O. Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, Cándida Rodriguez Larrendowtte, Wanda Rodriguez Hernández, Carlos Serra Velez, Benjamin Wu, Haydee Figueroa Guzman, and Jose Rafael Vázquez, and others to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm, in violation of Title 18, United States Code, Sec. 1951..."

The "Government Version of the Facts" of the "Plea and Cooperation Agreement" refers to the payments made by Mr. Habibe, Sr., to Mr. Bernardo Negrón, while the latter was President of the Governing Board of the CRIM, amounting to $41,416.00; to Mr. Eduardo Burgos amounting to $208,500.00; to Mr. Carlos Serra amounting to $4,000.00; to Mrs. Margarita Sanfeliz amounting to $274,118.94 and to Mrs. Cándida Rodriguez in the

amount of $5,000.00; a boat for Eduardo Burgos of $49,000.00; access to an account of Banco Santander where Habibe, Sr., deposited $68,500.00, approximately, which Mr. Burgos and/or Cándida Rodriguez later withdrew, among others.

g. ***Admissions of Mr. Tommy Habibe Vargas (Habibe, Jr.)***

Mr. Habibe, Jr., was President and owner of Entec, according to his admittance in his "Plea and Cooperation Agreement". On April 25, 2002, Mr. Habibe, Jr., pleaded guilty of charge one of the indictment against him in U.S. v. Negrón. In so doing, Mr. Habibe, Jr., accepted among others, to the following facts:

> "In or about June, 1994, and continuing through in or about March, 2000, . . . while serving as President and owner of Entec Corporation, a member of the Consortium who was awarded the LIMS

> contract by CRIM. .participated in a conspiracy . . . to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm, in violation of Title 18, United States Code, Sec. 1951.
>
> Essentially, defendant, Tommy Habibe Vargas met with co-defendant Margarita Sanfeliz Wu to discuss the proposal for the submission of the LIMS project before the project went out for bidding. It was agreed amongst (sic) the defendants that defendant Habibe Vargas would prepare the specks (specifications) for the project that was going to be submitted to the general public for bidding by CRIM....."

Note that Mr. Habibe, Jr., admitted to having met with Margarita Sanfeliz to discuss the proposal for the LIMS project before the project went to public bids and agreed that Mr. Habibe, Jr., would prepare

the specifications of the project to be submitted to public bids. On her behalf, Mrs. Sanfeliz accepted in her "Plea and Cooperation Agreement" that the RFP that she received from Mr. Habibe, Jr., "....ensure that the Consortium formed by codefendants, complied with the requirements of the LIMS Project".

h. ***Admissions of John P. Stephens***

On June 17, 2002 Mr. John Stephens pleaded guilty to charge 17, conspiracy to money laundering, in violation of 18 U.S.C. 1956(h) a felony. Accepted, in his plea agreement with the Federal Government, among others, that ".....he was aware that Margarita Sanfeliz Wu, . . . . , was obtaining monies from members of the Consortium in exchange for her facilitating the Consortium's businesses with CRIM". He also admitted to having witnessed a transaction

that took place on September 1995 to disguise the payment to the Consortium, amounting to $100,000.00, to Margarita Sanfeliz.

i. ***Admissions of Cándida Rodriguez***

She pleaded guilty to charge 18, conduct financial transactions to disguise the illegal nature of the money originating from illegal activities, a felony. She accepted to having received $76,000.00 from Mr. Eduardo Burgos, whom, in turn, received money from Habibe, Sr., and other members of the Consortium.

Mrs. Cándida Rodriguez accepted that Mr. Habibe, Sr., furnished Mr. Eduardo Burgos and herself access to a checking account under the name of Active Consulting, Inc. A third party signed the checks, and in doing so, admitted:

"Defendant Cándida Rodriguez Larrendowtte was the Assistant Director of the CRIM. She was receiving monies from Eduardo Burgos Lebrón, then Executive Director of CRIM, whom was obtaining monies from Tommy Habibe Sr., and others in exchange of him facilitating Tommy Habibe, Sr., and others businesses with the CRIM.

During the time frame and this conspiracy defendant Cándida Rodriguez receive approximately $76,000.00 from defendant Eduardo Burgos Lebrón who was receiving the monies from co-defendants Habibe, Sr., and other members of the consortium.

On or about December 5, 1998, defendant Habibe, Sr., deposited $40,000.00 into a checking account in the name of Active Consultant, Inc., for the purpose of making contributions to the new progressive party from which defendants Eduardo Burgos and Cándida Rodriguez benefited from. On or about January 27, 1998, defendant Habibe, Sr., provided to defendants Eduardo

> Burgos and Cándida Rodriguez access to the checking account that was in the name of Active Consulting, Inc. On that same day Eduardo Burgos and Cándida Rodriguez caused a third party to become a signatory in the account. From said account both Eduardo Burgos and Cándida Rodriguez withdrew approximately $39,979.17 using a third party previously designated by them to cash the checks. Defendant Cándida Rodriguez knew that these monies were proceeds derived from the unlawfull activities of Eduardo Burgos Lebrón."

In this way, Eduardo Burgos and Cándida Rodriguez obtained $39,979.17.

CRIM also included, as we will see, checks from the account of Active Consulting, with its' Summary Judgment request.

j. ***Mrs. Wanda Rodriguez***

On June 17, 2002 pleading guilty to charge 12, a felony. Mrs. Rodriguez accepted to having received

$20,000.00 from Eduardo Burgos, whom in turn received them from Mr. Habibe, Sr.

k. ***Roberto Roca***

On March 11, 2002 Mr. Roca, pleaded guilty for the crime of perjury, for having lied to the Grand Jury. Mr. Roca, through one of his companies, Fiberglass Technologies, Inc., made a payment to Margarita Sanfeliz of $50,000. As evidenced in the Summary Judgment Request, there was a check from Fiberglass Technologies, Inc., for $50,000 to Margarita Sanfeliz. Afterwards, Habibe Computer, another company controlled by misters Habibe, issued a check for $50,000 signed by Habibe, Sr., and Habibe, Jr., to another related company to Mr. Roberto Roca called R & R Engineering, Co. The check for $50,000 of Habibe Computer to R & R Engineering, as well as the stipulation regarding the authenticity of the parties over the check of Habibe

Computer to R & R, (MCO, page 5, no. 26), ensues from the court proceedings.

l. ***Mrs. Haydeé Figueroa***

Mrs. Figueroa was the Secretary to the Mayor of Villalba, Mr. Bernardo Negrón. Mrs. Figueroa pleaded guilty to one federal felony. In doing so, she admitted that she used to contact the secretary to Mr. Héctor L. Rivas, principal of HLRA, to coordinate vacations for Mr. Bernardo Negrón and his family, whose vacations were paid for by Héctor L. Rivas, as well as payment for invoices on expenses incurred by Mr. Bernardo Negrón. Also, she accepted she received several checks by Héctor L. Rivas which she cashed to forward the money to her boss, Bernardo Negrón.

m. ***Mr. Guillermo Colón Santos***

He pleaded guilty to perjury for having lied to the federal Grand Jury. Mr. Guillermo Colón built a

gazebo in the home of then Executive Director to the CRIM, Mr. Eduardo Burgos. When questioned by the Grand Jury over who had paid him for said gazebo, he answered that Eduardo Burgos gave him cash for said construction. However, Mr. Colón Santos knew and was aware that the money to build the gazebo had been paid for Héctor Rivas, principal of Héctor L. Rivas & Asociados (HLRA), contractor for CRIM in the LIMS project.

The unchallenged evidence submitted by CRIM in its' Summary Judgment Request confirms payments made to officers and agents of CRIM by contractors members of the Consortium, namely, Entec, CEPI and HLRA and its' principals, Habibe, Sr., Habibe, Jr., Héctor Luis Rivas, and John P. Stephens, whom currently convicted in the criminal case U.S.D.C. 00-660, admitted to. Let's see:

As previously referred, Mr. Eduardo Burgos accepted in his "Plea and Cooperation Agreement" that Mr. Habibe, Sr., opened a checking account in Banco Santander to deposit money with the purpose if it being used by Burgos Lebrón and Cándida Rodriguez. Said account was opened in the name of a company that originally was called Active Consulting, Inc., and later Creative Consulting, Inc., as ensues from the Certificate for Correction of Name before the Department of State which appears attached to the request of the CRIM. The directors and officers of Creative Consulting, Inc., were, in 1998, Messrs. Tommy Habibe, Sr., and Tommy Habibe, Jr., according to the Annual Corporate Report for 1998 attached to the Summary Judgment Request.

During a deposition from Mr. Burgos on November 12, 2002, he repeated what he admitted

when pleading guilty and explained that Mrs. Cristina Alvarez, aunt of the co-defendant Cándida Rodriguez, signed the checks of the Active Consulting/Creative Consulting, Inc., account, she obtained the money and would deliver it to the co-defendant also convicted Mrs. Cándida Rodriguez. It is so stated in the portion of the deposition of Mr. Eduardo Burgos on November 12, 2002 attached to the request of the CRIM. These monies were used for the personal expenses of Cándida Rodriguez and Eduardo Burgos and for political contributions, as admitted by Mr. Burgos in his deposition.

The agreement/request of the Active Consulting, Inc., account kept in the court proceedings confirms that the authorized signature is of Cristina Alvarez. Copy of check 102 of Active Consulting to "Cash" dated March 10, 1999 and of check 104 to Cristina Alvarez signed by Cristina

Alvarez for $5,000 dated May 3, 1999 are also kept in the court proceedings.

Other checks that are Exhibits to the Request of the CRIM and confirm the scheme of payments to officers of the CRIM by the members of the Consortium and of its principals, are the following:

With respect to Mr. Carlos Serra:

a. Check of $500.00 number 1227, issued by CEPI of Banco Santander de Puerto Rico, account number 3003001236, signed by Tommy Habibe, Jr., and Wilfredo Marrero Ortiz, dated May 8, 1998 to Comite Amigos de Carlos Serra.[18]

b. Check number (illegible) of Habibe Computer Corporation dated July 3, 1996 for

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[18] See footnote 2 regarding stipulation of authenticity of the itemized checks under letters (a) – (e), both inclusive, and the Motion to Comply with Order of December 17, 2003, page 3, numbers 12 and 13; and page 4, numbers 14, 15, and 16.

$1,000.00 to Comite Serra 96 signed by Tommy R. Habibe.

c. Check number 1438 of Engineering Technologies to Comité Serra 96 for $1,000.00 dated July 3, 1996, signed by Tommy R. Habibe.

d. Check of Habibe Computer Corp., number 9798 in the name of PNP Corozal, dated August 25, 1997 for $500.00 signed by Tommy R. Habibe, Sr., and check number 1873 in the name of Comité Amigos Carlos Serra, dated May 7, 1998, of the account of Habibe Computer Corp., of Banco Santander de Puerto Rico, account number 001033947, signed by Wilfredo Marrero and Tommy Habibe, Jr.

e. Check number 1511 of Entec Corp., dated May 8, 1998 for $500.00 to Comité Amigos de Carlos Serra by Tommy Habibe, Jr., and Wifredo Marrero Ortiz. With respect to Bernardo Negrón,

President of the Governing Board of CRIM and Mayor of Villalba at the time, CRIM submitted evidence of the following payments:

a. Check number 454 of Tommy R. Habibe and/or Sonia I. Ocasio, of Banco Santander de Puerto Rico, account number 701005353 payable to Comité Amigos Bernardo Negrón dated September 22, 1995 signed by Tommy Habibe, Sr., for $3,000.00.[19]

b. Check number 7163 of August 29, 1996 signed by Tommy Habibe, Sr., of account number 0001033947 of Habibe Computer Corp., payable to Servicentro Esso de Villalba for $2,916.00.

c. Copy of check of Habibe Computer Corp., number 2040 dated June 8, 1998 payable to

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[19] See footnote 2 regarding stipulation for authenticity of the checks 454, 7163, 2040 and 1840; and "Motion to Comply with Order" of December 17, 2004, page 4, numbers 18 and 19 page 5, numbers 24 and 25.

Avancinos de Villalba, subscribed by Frankie Habibe and Tommy Habibe, Jr., for $7,500.00.

d. Copy of check of Habibe Computer Corp., number 1840 to the order of Avancinos de Villalba dated June 30, 1998 for $7,500, signed by Wilfredo Marrero and Tommy Habibe, Jr.

e. Check number 3644 of Habibe Computer Corp., of February 18, 1999 for $10,500 to Hispanic Elected Local Officials (HELO) of Banco Santander de Puerto Rico, account number 001033947, signed by Frankie Habibe and Tommy Habibe, Jr.. Mr. Negrón was part of this organization known as HELO.

f. Official check of August 23, 1995 of the Cooperativa de Ahorro y Crédito de Barranquitas, for $5,000.00 to the Secretary of the Treasury re: Bernardo Negrón Montalvo and receipt 934861669 over withdrawal of $5,000.00 of savings account of

Héctor L. Rivas of the Cooperativa de Ahorro y Crédito de Barranquitas ("Savings and Loan Bank of Barranquitas") dated August 23, 1995.

g. Copy of check number 215 of HLR & Asociados of the Cooperativa de Ahorro y Crédito de Barranquitas, account number 021502383025 03039643 dated November 13, 1995 issued to the order of Banco Popular for $2,700 with reference 4549 150 587 279012.

h. Copy of request of Bernardo Negrón over Visa credit of Banco Popular with account number 4549 150 587 279 of 11/2/84 and statement of account of the credit card reflecting a payment for $2,700.00 of check 215 of HLR & Asociados. That is, HLRA paid accounts of the credit card to Mr. Negrón.

i. Check for $2,700 signed by Héctor L. Rivas in "cash" of Banco Popular, Orocovis Branch,

account number 076028607 endorsed by Comité Amigos de Bernar.

j. Check of HLR & Asociados to Urbanística, LTD, the corporation controlled by Margarita Sanfeliz for $20,000.00.

## APPLICABLE LAW

### Relevancy of the Documents

There are a series of documents, previously identified in this partial judgment, whose authenticity was stipulated by CRIM and the co-defendants ENTEC, CEPI, Tommy R. Habibe Arias (Sr.), Tommy O. Habibe Vargas (Jr.), his wife Elsa Burgos, Habibe Enterprises, Inc., Habibe Computer Corp. (currently Venture Technologies Corp.), Geotel, Inc. (formerly Woolpert Puerto Rico, Inc.) in the Motion to Comply with Order dated December 17,

2003.[20] (See footnote 2 and related notes.) Nevertheless, said co-defendants stated their positions to the effect that said documents are irrelevant to the controversy regarding the nullity of the LIMS contract.

Rule 18(a) of Evidence disposes the general principle that all pertinent evidence is admissible. On one hand, Rule 18(b) of said legal body defines pertinent evidence as that which tends to make the

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[20] Afterwards, and by order of this Court requesting to express themselves regarding the stipulation, the co-defendant Carlos Serra expressed that he stipulated the authenticity of the documents itemized in the Motion to Comply with Order of December 12, 2004. Co-defendant Margarita Sanfeliz exposed through motion that, regarding the documents not subscribed and/or related to her she would abide by the stipulated by the involved parties, that stipulated the authenticity of the legal documents and official documents and the authenticity of the documents subscribed and/or related to her subject, the latter ones, to her verification once she arrived from the prison where she was confined at the date of the motion, that is, by June 16, 2005. Later the co-defendant appeared in court for other issues, and from that appearances ensued that Mrs. Sanfeliz is already out of prison. Since she did not make expressions against the authenticity of the documents subscribed and/or related to her, the stipulation of authenticity is granted. The co-defendant Sanfeliz did not oppose either to the Request of the CRIM.

existence of a fact more probable or least probable of what it would be without such evidence, so long as said fact refers to an issue in controversy or to the credibility of a witness or declaring party. Our Supreme Court has referred that "the pertinent concept demands that the evidence that is intended to be used be material and relevant. Evidence is material if it is addressed in establishing an adjudicative fact, that is to say, if it refers to an element of the claim, defense or credibility of the witnesses or of the declaring party. In the end, it is a matter of substantive law.

On one hand, the relevance belongs to the area of procedural law that what it looks for is for the evidence to have a tendency to make a controversial fact more or less probable". Hon. Charlie Rodriguez, President of the Senate, et als., 148 DPR 737 (1999).

The documents that the defendants consider irrelevant, demonstrates the conspiracy prior to granting the LIMS contract on July 20, 1995, among the indicted, today convicts, including the then Executive Director of the CRIM, his assistant, his Finance Director, his "advisor" for the LIMS contract and the principals of the Consortium. Also, in spite of the time extensions granted, the co-defendants did not oppose the well-based Request for Summary Judgment of the CRIM. Lastly, the "Plea Agreements" include admissions of the co-defendants Mr. Habibe, father and son, Margarita Sanfeliz, Cándida Rodriguez, Carlos Serra, Eduardo Burgos, Bernardo Negrón, John P. Stephens Rexach, among others. See Rule 62 of Evidence.

**The Origins of the Mechanism for Summary Judgment**

Rule 36.3 disposes that a court to whom a request has been made to rule a summary judgment in a case, will be able to do so if "(1) the allegations (depositions), answers to questionings and admissions offered, together with sworn statements if there are any, demonstrate that there is no real substantial controversy regarding any material fact and as an issue of law summary judgment should be dictated in favor of the promoting party". The mechanism for summary judgment, gathered in Rule 36 of Civil Procedures, is a result of the paradigm of said procedural normative body, pursuant to searching for a "just, fast and economic solution, of all procedures". Rule 1 of Civil Procedure, 32 L.P.R.A. Ap. II R.1; Pilot Life Insurance Company v. Crespo Martinez, 94 J.T.S. 104. "Through said procedural mechanism the intention is to obtain a fast and efficient remedy, in cases in which it

remains demonstrated that there is no controversy over the material facts of the lawsuit....The end of the summary judgment is to speed the transactions of a case, allowing to pronounce judgment without holding a hearing by its' merits, when of non controversial documents ensues that controversies of facts do not exist, when instead what remains is to apply the law". PFZ Properties, Inc. v. General Accident Insurance Company, P.R., Ltd., Op., of September 7, 1994, 94 J.T.S. 116, pages 124-25. (Omitted quotes.) That is the situation in the case before court.

**Admissibility of Guilty Pleas**

Rule 65 (V) of Evidence, 32 L.P.R.A. Ap. IV, disposes that it is admissible as an exception to the rule of hearsay evidence, even when the deponent is available as witness, among others, the following:

> "(V) *Judgment for previous conviction*—Evidence of a final judgment, after a judgment or guilty plea, declaring a person guilty of a felony, offered to prove any essential fact to uphold the conviction judgment."

As established by our maximum Court in the case Maysonet v. Granda, 133, D.P.R. 676, 685 (1993), in order to be admissible against a party it is enough that the manifestation or admission be contrary to the interest of the deponent at the moment of offering against him as evidence.

Rule 65 (V) of Evidence altered the previous legal state to exclude as evidence in a civil lawsuit a conviction for a felony. See to this respect, Chiesa, Ernesto L., *Tratado de Derecho Probatorio* ("Discourse on Probation Law"), Tomo II, Publicaciones J.T.S. (1998), to page 881. The reason for this exclusion is the lack of motivation to litigate

a criminal case that involves a felony. Id; Maysonet v. Granda, 133 D.P.R. (676, 685-86 (1993). This exclusion does not harm at all a guilty plea in a felony, as is the case that interests us.

The normative case regarding the admissibility of evidence of a guilty plea after the approval of Rule 65 (V) of Evidence is Maysonet v. Granda, supra. In this case the court establishes that "when the admissibility of a party concludes in a conviction for crime judgment, the admissibility as substantive evidence of the resulting admission and judgment is conditioned to the disposition of Rule 65(V) of Evidence". Id., to page 685. The court in this case decides that a conviction for the crime of involuntary manslaughter resulting from a guilty plea is admissible as an exception to the rule of secondhand evidence.

The Court reaffirmed the established norm in the case of Toro Lugo v. Ortiz Martinez, 105 D.P.R. 229 (1976), to the effects that the facts proved in a penal cause constitute evidence *prima facie* of its' existence, admissible in a civil lawsuit. The party to whom said evidence results adverse has the right to explain the reasons for accepting the agreement of preconcerted allegation and guilty plea. The judger of the civil lawsuit will then make its' own appreciation of the evidence. Due to all the reasons previously exposed, a guilty plea in a federal case is admissible as evidence in a civil lawsuit under Rule 65 (V) of Evidence, most of all when the Referred evidence has not been challenged.

On the other hand, a guilty plea in as much to an indictment for felony is clearly admissible in evidence under Rule 62(A) of Evidence, 32 L.P.R.A. Ap. IV, R.62 (A), that disposes that: "it is admissible

as an exception to the rule of secondhand evidence a declaration offered against a party if the declaration: Is made by said party, either in its' individual or representative character".

The Supreme Court, in Federal Deposit Ins. Corp. v. Caribbean Marketing Ins. Ag. Corp., 123 D.P.R. 247, 258 (1989), explains the basis for Rule 62(A):

> "The essential reason for the admissibility of the admissions is that one party cannot reasonably object the admissibility in the basis that it did not have the opportunity of counterinterrogate himself; just as well is absurd the objection that the deponent (the same that now objects) is not worthy of credibility because it did not make the declaration under oath. Another frequent justification is that admissibility is inherent to the adversary system. It has also been said that admissions must be received as circumstantial evidence. Others limit to say

> that there is no admissibility problems since it is not an issue of secondhand evidence."

In a latter case the Court decides that manifestations or admissions made by an accused during the prejudicial or investigative phase of the case are admissible under Rule 62(A) of evidence, if and when the constitutional rights of the accused have not been violated. Pueblo v. López Guzmán. 131 D.P.R. 867, 882 (1992). If a declaration made by a party out of court and an admission made during the investigative process are admissible as evidence under Rule 62(A), there should be no doubt as to the admissibility in evidence of a guilty plea made by a party before a judge, with assistance from his attorney, and later personally reaffirmed and under oath before the judge, as the ones involved in the case in court.

**Nullity of the LIMS Contract**

Article 4 of the Civil Code, 31 L.P.R.A. sec. 4, disposes that, "Acts executed against what is disposed by law are null, except when that same law orders its' validity". The word "null" in this article has the range of null *per se*, of inexistent. Corporación Azucarera v. Junta Azucarera, 77 D.P.R. 397, 409 (1954). In Puerto Rico's ordinance the contracts without cause or when the cause is illegal do not exist. Sánchez Rodríguez v. López Jiménez, 116 D.P.R. 172, 181 (1985). On the other hand, it is known that "...what is null never had any efficacy, was never legally born, never existed." Brown III v. J.D. Cond. Playa Grande, 2001 TSPR 80, 2001 JTS 83. The guilty pleas of the officers and agents of CRIM and the rest of the defendants in the case U.S. v. Negrón, in particular of the former Executive Director of CRIM, Mr. Eduardo Burgos, the "consultant" of CRIM, Mrs. Margarita Sanfeliz and

her husband, Mr. Benjamin Wu, as well as Mr. Habibe father and Mr. Habibe son, evidence the illegality of the cause of the LIMS contract, of the CRIM with the Consortium and the illegality of the consent of the Board of Directors of CRIM. An illicit action is *ultra vires* and there is no authority in law for *ultra vires* acts.

Article 1213 of the Civil Code, 31 L.P.R.A. sec. 3391 disposes that: "There is no contract except when the following requirements are met: (1) Consent of the contracting parties. (2) True object which is contract matter. (3) The cause of the obligation be established". That is to say, if these three elements do not concur in perfecting a contract, the same is nonexistent.

> It is in this way that Manresa explains in his Comentarios al Código Civil Español ("Comments to the Spanish Civil Code"):

> Although article 1.261 of the Code (ours 1213), by its own generalities, seems to have no other end but that of an enumeration, the matter is so essential, and the precept so full of energy, that from it can be derived the most important consequence that when one of the three requirements is missing there is not merely a nullible contract but susceptible to confirmation as well, but something else happens, that is that the legal bond is absolutely missing and there is no contract, as the legal text says (emphasis in the original). José Manresa, Comentarios al Código Civil Español, Tomo VIII, Vol. 2, 476 (6ta. Ed. 1967), underlined by us.

The agreement between CRIM and the Consortium suffers from the same deficiency of needed elements in a contract. As it ensues from the admissions of Mr. Bernardo Negrón, then President of the Governing Board of CRIM and of it's then Executive Director, Mr. Burgos, they had knowledge

of all the scheme that had been planned for their personal benefit and of other agents and employees of CRIM. Said acts are contrary to law and to the public order and motivated by a desire for personal profit. Their actions also constitute violations to the Penal Code of Puerto Rico and to the Governmental Ethics Law that protected them as public servants, and therefore, *ultra vires*.

There is no evidence that the rest of the members of the Governing Board of CRIM knew about the fraudulent scheme. The evidence rather demonstrates that the convicted agents and/or employees of CRIM, led them to believe that the LIMS contract was in accordance to the law, to the morals and to the public order. To those effects, the convicts made or caused to happen the routine steps for a contract of such magnitude; namely, they published newspaper ads inviting the public to

submit proposals to develop the land registry system, they handed the bidders the "Request for Proposal" (RFP), held the "pre-bid meeting", there were written questions to CRIM by the bidders Geodata/ESRI, IBM, Intergraph/Entec and Unisys that CRIM answered, there were site visits, Mr. Eduardo Burgos invited a group of persons to be part of an "Evaluation Team of Experts", CRIM received two technical proposals for all the project, one of them submitted by Entec/Intergraph and the other by ESRI and a technical proposal by IBM, only for the portion of aerial photography and photogrametry, Mrs. Margarita Sanfeliz prepared a document entitled "General Evaluation, Comments and Observations" regarding the proposals of ESRI and of Entec/Intergraph. All these facts were stipulated in Motion to Comply with Order of December 17, 2004.

Nevertheless, of the analysis of the agreements of the accused, today convicts, to plead guilty to federal felonies in U.S. v. Bernardo Negrón, ensues that it was previously agreed that the "evaluation" of the proposals submitted by the bidders, favor the proposal of the Consortium, an issue that the Governing Board did not know, with the exception of its' President, Bernardo Negrón and Mr. Carlos Serra, and of course, by Margarita Sanfeliz, the CRIM consultant and Mr. Eduardo Burgos. The Bids Board approved the "evaluation" and the recommendation of Margarita Sanfeliz and a Mr. Sassic, Jr., "external advisor", whom recommended that the Consortium move forward to the second phase of the schedule, the same day that Margarita Sanfeliz sent it to the CRIM. That ensues from the Minutes of the Bid Board of March 6, 1995 that remains in court proceedings. Also note, that

Margarita Sanfeliz accepted that her recommendation was made using the evaluation made by Tommy R. Habibe, Jr., principal of ENTEC, corporation that, at that moment, was one of the companies participating in what was supposed to be an open bid. Mr. Eduardo Burgos communicated in writing to the competitor of the Consortium (ESRI) his disqualification and to the Consortium that it had been "chosen" for the next phase. The evaluation of the subsequent price evaluation for the project, submitted by ENTEC, CEPI and HLRA to CRIM, was also assigned to Margarita Sanfeliz, according to the Minutes of the Bids Board on May 12, 1995. The Consortium submitted its' Cost Proposal for $56,042,352. Again, Margarita Sanfeliz "evaluated", considering it favorable. Said "evaluation" was presented to the Bids Committee the next day of having received it by fax and was approved in a

meeting called for "on an urgent basis", according to the Minute of May 26, 1995 of the Bids Committee that remains in court. On June 14, 1995 the Evaluating Committee, with the presence of Bernardo Negrón, Eduardo Burgos and Margarita Sanfeliz, resolved to present the Governing Board the cost proposal. Mr. Burgos contended that the costs of the Project were "self-liquidating", that is, that the income that the project would produce would cover the costs, according to Minute of the Governing Board of CRIM of June 21, 1995. On June 21, 1995, without knowing that from the beginning of the project everything was arranged in order for the Consortium to obtain the project and later payments would start to Margarita Sanfeliz, Bernardo Negrón, Eduardo Burgos, Carlos Serra and the other officers and employees of CRIM, the Board approved the project. This approval is stated in the Minutes of the

Governing Board of June 21, 1995 that remains in court.

The Supreme Court of Puerto Rico has been extremely consistent upon declaring null the obligations contracted in violation to the law, specially in matters with a high level of public interest, such as the present case. Fernández & Gutiérrez, Inc. V. Municipio de San Juan, 147 D.P.R. 824 (1999); Hatton v. Municipio de Ponce, 134 D.P.R. 1001 (1994); Venancio Morales v. Municipio de Toa Baja, 119 D.P.R. 682 (1987). The Court in the case of Venancio Morales, supra, determined that the acts of a municipality in violation to the law were null and *ultra vires*, therefore they could not have an effect in favor of the contracting plaintiff. Venancio Morales, *supra*, page 691. The Court bases its' opinion with respect to the nullity of the contracts against (illegible) of Civil Code, 31 L.P.R.A., sec. 3372, that

disposes that "the contracting parties can establish pacts, clauses and conditions that they may find convenient, whenever they are not contrary to the laws, to the morals, nor the public order".

In De Jesús González v. Autoridad de Carreteras, 148 D.P.R. 255 (1999), the Supreme Court determined, based in article 1207 of the Civil Code, 31 L.P.R.A. sec. 3372, that any contract contrary to law, to the morals and to the public order is null and inexistent: Independently of the type of contract and of the importance that this deserves for the contracting parties, it is null and, therefore, inexistent, a contract that results contrary to laws, to the morals and to the public order". De Jesús González, supra, to page 264.

In so far as the contracts in which the Commownealth of Puerto Rico is a part, the Court in De Jesús Gonzalez expresses itself in this way:

> "When the contracting involves the use of goods or public funds, we have insisted, also, the strict application of all the rules pertinent to the contracting and withdrawals of these funds, to the end of protecting the interests and monies of the people. We have emphasized that the prudent handling of public funds is saturated with interests of a public order. We have stressed in a standard way the imperious need to prevent the squandering, the extravagance, the favoritism and the prevarication in governmental contracts (omitted quotes)". Id., to page 268.

CRIM is an entity created to collect, receive and distribute public funds. Article 3 of Law No. 80 of August 30, 1991, 21 L.P.R.A. sec. 5802. Its' acts cannot be contrary to law or to the public order. The acts of the Executive Director of the CRIM, of the President of its' Governing Board, Mr. Bernardo Negrón, of one of its' directors, Mr. Carlos Serra, of

its' Director of Finance, Mrs. Wanda Rodriguez, of the assistant to the Executive Director, Mrs. Cándida Rodriguez, and of its' "consultant" for the LIMS project, Mrs. Margarita Sanfeliz, in violation to the law, to the morals and to the public order, as well as the acts of the mayor in violation of the Municipal Law, are null and *ultra vires*, for the reasons exposed in the previously quoted cases.

The Supreme Court has defined the term "*ultra vires*" as those, "...acts or businesses conducted in excess of the authority inherent to the vested". Soto Vázquez v. Rivera Alvarado, 144 D.P.R. 500, 514 n. 2. The Governing Board of CRIM, as far as it is concerned (with the exception of its' President Mr. Bernardo Negrón and its' member Carlos Serra) did not know about the conspiracy that was brought upon it the decision to approve the adjudication to the Consortium of the $56 millions

contract. To them, the word and acts of the Executive Director, the "advisor" Margarita Sanfeliz and its' President (that included the request for proposal, bids and "evaluations" by Margarita Sanfeliz) seemed legitimate. An extensive federal investigation was needed, including investigations in banks of the United States and Puerto Rico, among others, to discover what had really happened. Just as it was mentioned by the Circuit Court of Appeals in a previous judgment in this same case, the LIMS contract is contrary to any public end and the interests of the State were never legitimately represented. (See Judgment, Circuit Court of Appeals, October 31, 2002). The CRIM cannot be charged with the *ultra vires* acts of its' Executive Director, Mr. Eduardo Burgos, Mr. Bernardo Negrón and Mr. Serra. A null contract can neither be

ratified nor validated, because it is inexistent. Ríos v. Municipio de Isabela, 2003 TSPR 122.

The Supreme Court has exposed that, "in a strict judicial technicality, a contract held between subjects that are conscious that through it (the contract) they injure someone else's right is a contract with an illicit cause, which is why the injured party is legitimized to request absolute nullity..." George Dennis y Metro Investors v. City Federal Savings and Loan Ass., et al., 121 D.P.R. 197, 218 (1988). Also, "when one of the parties is innocent...restitution is permitted." Sánchez Rodriguez v. Lopez Jiménez, 116 D.P.R. 172, 184 (1985). In order for the repetition deprivation to take place, the doctrine requires that the subject, must have been aware of the circumstances from where the illicitness derives, or conscious of the illicitness in itself or should have had it. Id.

On the other hand, Article 10 of the CRIM's law disposes pertaining to that: "Officers and employees of the Center will be subject to secs. 1801 et seq. of Title 3, known as 'Governmental Ethics Law of the Commonwealth of Puerto Rico'." Art. 10 of Law No. 80 of August 30, 1991, 21 L.P.R.A. sec. 5809. The Governmental Ethics Law specifically prohibits the type of conduct incurred by the officers and employees of the CRIM with respect to the agreement with the Consortium. See Arts. 3.2 thru 3.4 of Law No. 12 of July 24, 1985, 3 L.P.R.A. secs. 1822-1824, as amended. As a penalty to the violations previously described in Article 3.8, 3 L.P.R.A. sec. 1828, disposes, among others:

> "(a) Any person that intentionally violates the prohibitions and established dispositions in subsections (c), (d), (e), and (g) of sec. 1822, in the subsections (b), (c), (d) and (e) of sec. 1823, in sec. 1824 and

> in sec. 1827, all of this title, will incur in felony and if convicted, will be penalized for each violation with punishment of reclusion for a fixed term of one year or with a fine of two thousand (2,000) dollars; or both punishments at the discretion of the Court.
>
> If aggravated circumstances are interposed, the established fixed penalty may be increased up to a maximum of two (2) years or up to three thousand (3,000) dollars. If extenuating circumstances are interposed, the penalty may be decreased up to a minimum of nine (9) months or up to one thousand (1,000) dollars".

Lastly, the Purchasing Regulations of the CRIM, that remain in the records of the case, specifies that the officers and employees that intervene with bids and purchasing activities cannot accept gifts from the firms or individuals that provide services nor can they have economic interests in the bids and adjudication procedures. Mr. Burgos

and Mr. Bernardo Negrón, upon accepting the facts admitted to, they evidenced that they also committed a violation to the articles of the Regulation.

(illegible) in contravention to the law, to the morals and to the public order, is ineffective. Fernández y Gutiérrez, Inc., v. Municipio de San Juan, 147 D.P.R., to page 832. CRIM was never legitimately represented in this contract. Also, being *ultra vires* the acts of the officers that led by the hand the Consortium to obtain said contract, and also are illegal the acts of the Consortium, and these must return the CRIM what was illegally obtained without CRIM having any obligation towards them.

The Governing Board of CRIM is composed of nine (9) members, 7 (seven) mayors, the President of the Government Development Bank and the Commissioner of Municipal Affairs. 21 L.P.R.A. sec. 5804. Of these nine (9) members, only two (Bernardo

Negrón and Carlos Serra) were indicted and pleaded guilty to felonies that included the conspiracy to grant to the Consortium the LIMS contract. It then results evident, that the State (CRIM) is an innocent third party who was defrauded by a group of persons involved in criminal activities and the monies that it paid the Consortium must be returned with interests upon being declared null the LIMS contract. Hence, what proceeds upon the contract being declared null is for the defending Consortium Entec, CEPI and HLRA, currently Entec for having acquired Entec all the rights and responsibilities of HLRA, return the CRIM what they received from the CRIM. Ocasio Carrasquillo v. Municipio de Maunabo, 121 D.P.R. 37, 66 (1988). In said case the reconvention of the Municipality requesting the refund of received fees by the plaintiff, a technical advisor and a consultant to the municipality was accepted, in accordance with

certain contracts that were declared null, for being *ultra vires*, since there was no budgeting entry validly available.

Addressing a claim of recovery of public funds for the reason of illegal and fraudulent payments, the prescriptive term is the one to be applied to a personal action of money collection (15 years), as established in article 1864 of the Civil Code. E.L.A. v. Benjamín Cole y Comité del Partido Popular Democratico, 2005 JTS 55, E.L.A. v. Soto Soto Santigo 113 D.P.R. 304 (1992), E.L.A. v. Asociación de Empleados Obras Públicas, Núm. 126 D.P.R. 320 (1990). Which is why the case filed in court does not present a problem regarding prescriptions.

We cannot conclude without making reference to the dispositions of Article VI, Sec. 9 of our Constitution, that establishes the following:

"It will only be disposed of the properties and public funds for public ends and for sustaining and the performance of the institutions of the State and in any event, by authority of the law".

On the other hand, the Supreme Court has recognized that public funds and public monies have the same meaning and they have been used indiscriminately to express the same. P.P.D. v. Gob., ante, Pueblo v. Pérez 47 D.P.R. 765, 769 (1934).

Any alteration to the conditions specified in a contract made by a governmental entity whose end is to benefit the other contracting party because it lacks a reasonable basis or not solved in favor of the public interest, constitutes an undue disbursement of public funds in contravention of this section 9, Op. Sec. Just. No. 44 of 1962. Public funds should be used for public interests ends and should never be used in promotion of private enterprise nor for the benefit of

persons or particular entities. Op. Sec. Just. No. 7 of 1993.

There is a strong constitutional restriction to the use of public funds, which are ruled by the principle of legality. We adopt the expressions of our highest court in the case E.L.A. v. Cole P.P.D., P.P.D. v. Gobernador 139 D.P.R. 643 (1995) and Pérez v. Nanescau 33 D.P.R. 739 (1924):

> "The true essence of a free government consists of considering public office as a trust commissioned for the benefit of the country and not for the benefit of a determined individual or party".

In the already quoted case of P.P.D. v. Gobernador, the Associate Judge Fuster Berlingeri in his concurrent opinion makes an exposition that adjusts to the case in court and that we quote in part:

"In such democractic system, the people is the owner of public things. The funds and the properties that the governors handle belong to the people and only for the strict benefit of the people can they be utilized. The Government administrates the property and the public funds as a trust, from which it gives way the obligation to use them with the greatest scruple, in accordance to the nature and the ends of such goods.

That duty that all of those that exercise the authority of the State always have, of using public funds with the greatest honesty and only to benefit the people, is particularly imperative in societies such as Puerto Rico. Our country, that is far from being wealthy, has an enormous population group that cannot get an employment and who survives, essentially, on the basis of the economic assistance that the State provides. The deep dependency in public welfare, of almost half the population, imposes the Government of the Island the urgent duty of using public funds with special rigurosity to

promote the economic development and render quality services to those puertorricans that have been forced to depend upon welfare, its way of life. Allocate said funds to needs of questionable validity constitutes an insult against the poor of the country.

There is also another truth known in Puerto Rico, that comes together also to demand the greatest austerity in the use of public funds: The monies that the Government receives are collected, primarily, from taxes imposed upon millions of puertoricans who only receive a moderate income. A great portion of our working force consists of wage earning employees whose salaries are hardly enough to provide a stable and decent standard of living. Notwithstanding the fact that these workers really live at the edge of poverty, their limited incomes are taxable. In that way, the governmental coffers are filled, in part, with this fiscal contributions that constitute a real sacrifice for these wage earners who pay them. Wherefore the

> abovementioned taxes result burdensome, Government is forced to use said funds only for clearly legitimate ends. The excessive expenditure of these in projects of questionable public use, constitute a serious abuse against the constituents who have paid their taxes in exchange for serious austerities...
>
> The preeminent duty of using public funds only for authentical governmental ends, slightly outlined in the preceding paragraphs, is an integral part of our democratic way of life".

On the other hand, in the case E.L.A. v. Cole y P.P.D., supra, quoting A.E.E. and other v. P.N.P. 128 D.P.R. 294, our Supreme Court has reiterated that:

> "The undue disbursement of illegal public funds, in its multiple ways, sometimes rude and others sophisticated, are incompatible acts with the democratic governmental system consecrated in our constitution and supported in the respect to human dignity

> and the monies of the people as the only supreme ruler. The adopted formalities do not matter, nor the hierarchy of the officer involved, the same are not tolerable. At the last resort, who really is injured, not only financially but morally as well, is the citizenship in general... So then, it is the duty of the courts to vindicate those essential moral standards."

In this case of E.L.A. v. Cole, the Supreme Court also reiterates that "the proper handling of public funds is saturated with interests of public order without taking into account the involved amount".

Based on the entire facts that are alleged as true and over which extensive and robust non controvertible evidence was attached and from the analysis of the entire file, as well as from the applicable laws, we have no doubt that the acts perpetrated by all the co-defending parties, and

which brought forth their respective convictions, were obviously illegal and contrary to the morals and to the public order.

The public servants involved and those other persons or entities which in collusion with these, joined to perpetrate this rude assault to the public coffers and to the pockets of the tax paying people using their illegal activity to derive undue benefits and advantages of the work and efforts of those who responsibly met their taxable obligations, at times, at the expense of enormous sacrifice, have the duty not only of abiding with the prison aspect, but also, and equally important, carryout the civil aspect. Which is why they are forced to return all the monies obtained as a result of an illegal activity that started before the signature of the described contract.

Just and as indicated by our Supreme Court, the illegal disbursement of public funds is

incompatible with our democratic system consecrated in the Constitution, without taking into account whichever adopted formality it is an intolerable activity, since whom is really injured, not only financially but morally as well, is the citizenship, therefore it is the duty of the courts to reinvindicate those essential moral standards.

In relation to the issue of how much money does the CRIM request in restitution, this enclosed with its Request for Summary Judgment a collection of the paid checks to the members of the Consortium or in their names on behalf of the CRIM and collected by them and which amounted to fifty million six hundred fifty thousand nine hundred eighty-six dollars and forty-nine cents ($50,650,986.49).

Also enclosed, was a sworn statement of Mr. Angel González, Finance Director of CRIM, who

states that the recollection or summary of the checks represent the summary of the records of the CRIM over the payments to the Consortium. (See Rules 72 and 65 of Evidence.)

As a consequence of the declaration of nullity of the LIMS contract they become academic and therefore the causes of action of the reconvention[21] are dismissed, as requested by ENTEC, CEPI, Tommy R. Habibe Arias, Elsa Milagros Burgos de León, Habibe Enterprises, Inc., Geotel, Inc., and Venture Technologies, Inc., requesting: collection of money for supposed work performed by ENTEC and

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[21] On April 15, 2003 was awarded Denial of Motion submitted by CRIM in relation to the reconventions requested by ENTEC, CEPI, Habibe, Sr., Habibe, Jr., and his wife Elsa M. Burgos. The reconsideration requested, this Honorable Court received it and left the decision pending in relation to the reconsideration. The current decision makes academic the decision over the requested reconsideration, as well as the again requests of summary judgment of the CRIM, and the oppositions of the defendants, regarding the reconventions requested against the CRIM by Habibe Enterprises, Inc., Geotel, Inc., and Venture Technologies, Inc. The latter are identical to the reconventions of ENTEC, CEPI, Habibe, Sr., Habibe, Jr., and his wife.

CEPI under the LIMS contract, collection of money for maintenance services and products related to equipment, materials and components of the LIMS project, collection of money for changes to the specifications of the project, damages for the alleged non-compliance by the CRIM, damages for alleged libel of CRIM to ENTEC and CEPI upon publicly disseminating that the LIMS contract was subscribed as a result of a conspiracy to commit a fraud and that work was not performed, and of damages allegedly sustained by Mr. Habibe, Jr., when the CRIM charged them with having participated in the preparation of the RFP that would be used in the project to assure that ENTEC and CEPI would meet all the requirements.

Finally, but not less important, in September, 2000, H.L.A. & Associates (HLRA), Entec and CEPI submitted before the American Arbitration

Association (AAA) in New York a case of collection of money against the CRIM alleging breach of the LIMS contract on behalf of the CRIM. They requested $2,241,685.78 for alleged work performed from June, 1999 to February, 2000 plus interests: $1,626,186.16 allegedly for maintenance service to equipment and materials related to the LIMS project, $6,699,578 allegedly for change order for the LIMS project and $5,000,000 for loss of earnings, loss of business opportunities, libel and others, as ensues from the documents submitted by CRIM with its' request. On May, 2001 the attorneys for CRIM requested the suspension of said procedure, since in August, 2000 the indictment was issued in U.S. v. Bernardo Negron, et. al., Criminal No. 00-660; and on March 20, 2001 Mr. Eduardo Burgos pleaded guilty. The claimers opposed and the arbitration panel denied the suspension. Afterwards, CRIM

requested the panel to declare the contract null. Nonetheless, the panel assigned evidence hearing. Knowing all of what they later accepted in the guilty pleas, its' principals Habibe, Sr., and Habibe, Jr., and the claimers, ENTEC, CEPI and HLRA, (the Consortium) opposed the halting and dismissal of the arbitration lawsuit, forcing CRIM to litigate arbitration and request, at the same time, a preliminary injunction in this case to halt said arbitration. Said remedy was issued by the voice of Hon. Sonia I. Velez Colon, on June 27, 2002 and confirmed by the Circuit Court of Appeals. Certainly the preceding is irrefutable evidence of fearlessness, that justifies this Court impose fees for fearlessness to the Consortium.

According with all of the preceding:

The LIMS Contract of July 20, 2005 is declared null *ab initio*; and in consequence, is and it

is declared null the arbitration clause included in the LIMS contract.

The change order alleged by the Consortium is declared null.

Entec, CEPI and HLRA, currently Entec, is ordered to return to the CRIM $50,650,986.49 plus interests upon the date of judgment until it is satisfied, including court fees, with a fixed interest rate of 7% by the Financial Board of the Office of the Commissioner of Financial Institutions in effect from June 1, 2005 until December 31, 2005.

It has been determined that there was fearlessness on behalf of the defending party upon defending themselves against the causes of action over which a summary judgment is requested and as a consequence, it is also ordered the payment of the referred interests from the moment of filing the

current lawsuit on September 27, 2001 until the date of this judgment.

A permanent injunction is issued, addressed to the members of the Consortium Entec, CEPI and HLRA, prohibiting from continuing the arbitration procedure requested by them before the American Arbitration Association.

The Consortium is sentenced to pay $500,000.00 in account of attorneys' fees for having proceeded with fearlessness upon calling for an arbitration procedure for collection of money, knowing the principals of the Consortium what they later admitted to when they pleaded guilty, forcing the CRIM to defend itself in the arbitration requested by the Consortium, based on an arbitration clause included in a null *ab initio* contract. The position of the Consortium also forced the CRIM to request the current procedure and

defend the preliminary injunction issued in this case before the Circuit Court of Appeals. Later nor ENTEC nor CEPI nor Messrs. Habibe, opposed the Summary Judgment of CRIM in spite of having requested two extensions of time for that purpose. Finally, the CRIM is granted the court fees. To those effects CRIM must proceed according to Rule 44.1(a) of Civil Procedures.

This Court concludes that there is no reason to postpone the sentencing regarding the claims included in the amended second lawsuit in its' first cause of action, regarding the nullity of the LIMS contract; the second cause of action, related to the nullity of the arbitration clause, which are (both) granted; the third cause of action, requesting the annulment of the arbitration in process, which is overruled, since it becomes academic upon the annulment of the LIMS contract; the fourth cause of

action, in collection of money, which is overruled for being requested in the alternative of the eventuality that the LIMS contract would not be declared null; the fifth cause of action, regarding the inexistence of a change order, which is overruled for having been requested in the eventuality that the LIMS contract would not have been declared null; and the reconventions requested by ENTEC, CEPI, Tommy Habibe, Sr., Tommy Habibe, Jr., his wife Elba Milagros Burgos de León, Habibe Enterprises, Inc., Geotel, Inc., and Venture Technologies, Inc., which are overruled, until the complete resolution of the lawsuit.

Still pending are the sixth cause of action, damages, the seventh cause of action, for violations to the Law Against Organized Crime and Money Laundering of the E.L.A. and the eighth cause of action of the Second Amended Lawsuit to lift the

corporate veil. These will be dilucidated in good timing.

TO BE ENTERED AND NOTIFIED.

In San Juan, Puerto Rico, as of December 7, 2005.

/signed
GLORIA I. PEREZ MAURY
SUPERIOR JUDGE

Stamped:

I CERTIFY
GENERAL SECRETARY

Atty. Rebecca Rivera Torres

BY: GLORA MARTINEZ RIVERA (/initialized)

AUXILIARY SECRETARY

122

Supreme Court, U.S.
FILED

081137 MAR 4 - 2009

OFFICE OF THE CLERK
William K. Suter, Clerk

No.

IN THE
**Supreme Court of the United States**

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ENTEC CORPORATION, ET AL.,
*Petitioners*
v.

CENTRO DE RECAUDACIÓN DE INGRESOS MUNICIPALES,
*Respondent*

---

*PETITION FOR A WRIT OF CERTIORARI*
*TO THE SUPREME COURT*
*OF THE COMMONWEALTH OF PUERTO RICO*

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# APPENDIX OF PETITION
# VOLUME B

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Exhibit XII

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF SAN JUAN

| | |
|---|---|
| CENTRO DE RECAUDACIÓN DE INGRESOS MUNICIPALES (CENTER FOR MUNICIPAL INCOME COLLECTIONS)<br><br>Plaintiff<br><br>V.<br><br>ENTEC CORPORATION; CONSULTA ECONOMICA Y PLANIFICACIÓN, INC.; BY ITSELF AND IN REPRESENTATION OF THE CONCERNS OF HECTOR L. RIVAS AND ASSOCIATES IN THE LIMS CONTRACT, HECTOR LUIS RIVAS AND ASSOCIATES; TOMMY HABIBE ARIAS; TOMMY HABIBE VARGAS, HIS WIFE MRS. DE HABIBE VARGAS AND THEIR LEGAL COMMUNITY OF PROPERTIES | CIVIL NUMBER:<br><br>RE:<br><br>PRELIMINARY |

| | |
|---|---|
| CONSTITUTED BETWEEN THEM; HECTOR LUIS RIVAS COLON, HIS WIFE MRS. RIVAS COLON AND THEIR LEGAL COMMUNITY PROPERTIES AS CONSTITUTED BETWEEN THEM, JOHN PAUL STEPHENS REXACH, HIS WIFE MRS. STEPHENS REXACH AND THEIR LEGAL COMMUNITY PROPERTIES; EDUARDO BURGOS NEGRON, HIS WIFE MRS. BURGOS NEGRON AND THEIR LEGAL COMMUNITY PROPERTIES CONSTITUTED BETWEEN THEM; CANDIDA RODRÍGUEZ LARRENDOWTTE, HER HUSBAND MR. "A" AND THEIR LEGAL COMMUNITY PROPERTIES AS CONSTITUTED BETWEEN THEM; WANDA RODRIGUEZ HERNANDEZ, HER HUSBAND MR. "B" AND THEIR LEGAL COMMUNITY PROPERTIES AS CONSTITUTED BETWEEN THEM; BERNARDO NEGRON MONTALVO, | INJUNCTION, PERMANENT INJUNCTION, NULLITY OF THE CONTRACT, DAMAGES, ORGANIZED CRIME LAW AND/OR COLLECTION OF MONEY |

HIS WIFE MRS. NEGRON MONTALVO AND THEIR LEGAL COMMUNITY PROPERTIES AS CONSTITUTED BETWEEN THEM; AND THEIR LEGAL COMMUNITY PROPERTIES AS CONSTITUTED BETWEEN THEM; CARLOS SERRA VELEZ, HIS WIFE MRS. SERRA VELEZ AND THEIR LEGAL COMMUNITY PROPERTIES AS CONSTITUTED BETWEEN THEM; MARGARITA SAN FELIZ WU, HER HUSBAND BENJAMIN WU AND THEIR LEGAL COMMUNITY PROPERTIES AS CONSTITUTED BETWEEN THEM

Defendants

**COMPLAINT**

TO THE HONORABLE COURT:

Appears in Court the Plaintiff, Centro de Recaudación de Ingresos Municipales (hereinafter "CRIM") by way of the underwritten legal

representation and very respectfully explains, pleads and requests:

## THE PARTIES

1. The CRIM is an independent municipal entity and separate from any other government agency, created by Law No. 80 of August 30, 1991, as amended on 21 L.P.R.A. § 5801 ET. SEQ., with judicial competence to sue and be sued. 21 L.P.R.A. § 5803 (1). Its primary responsibility is to collect, receive and distribute public funds that belong to the municipalities. It's physical and postal address is: 1130 Muñoz Rivera Avenue, San Juan, Puerto Rico 00927-5009; P.O. Box 195387, San Juan, Puerto Rico 00919-5387.

2. Mr. Eduardo Burgos Lebrón was named Executive Director of the CRIM, on July 1, 1993 and

remained in this position uninterruptedly until November 30, 1999, date on which he resigned.

3. The Defendants ENTEC Corporation (hereinafter "ENTEC"), Consulta Económica y Planificación, Inc. (hereinafter "CEPI") are corporations organized under the laws of the Commonwealth of Puerto Rico. Héctor Luis Rivas y Asociados (HLRA) is, or was and/or represented, at the time of the facts, a society.

4. ENTEC is dedicated or was dedicated, at the time of the facts herewith referred to, the business of selling computer hardware and software and is or was exclusive representative of Intergraph Corp., in the Commonwealth of Puerto Rico. Intergraph Corp., was a corporation organized under the laws of the state of Alabama and distributor for computer software and hardware based in Huntsville, Alabama.

5. Mr. Tommy R. Habibe Arias (hereinafter Habibe, Sr.) was Chairman of ENTEC, President and Owner of Habibe Enterprises, Inc. Habibe Enterprises, Inc., was the parent company of several companies including ENTEC.

6. Mr. Tommy O. Habibe Vargas (hereinafter Habibe, Jr.) was the President and Owner of ENTEC, a corporation organized under the laws of the Commonwealth of Puerto Rico.

7. Messrs. Habibe, Sr., and Habibe, Jr., also were owners and/or had control of the following entities: Habibe Computer Corp., Engineering Technologies; Woolpert of Puerto Rico, Inc., Active Consulting, Inc., CEPI and ENTEC. The latter two are defendants in this proceedings.

8. CEPI is dedicated to/or was dedicated at the time of the facts herewith referred to, the business of providing administration consulting

services to various municipalities of the Commonwealth of Puerto Rico. On or about February thru June, 1996, ENTEC and/or Mr. Habibe, Sr., and/or Mr. Habibe, Jr. controlled and/or became owners of CEPI and/or CEPI obligations in the contract with the CRIM, object of this lawsuit. Before this, Mr. Nelson Soto was the President and Owner of CEPI. Mr. Nelson Soto died before the indictment was submitted in the criminal case referred to in Paragraph 14, infra.

9. HLRA is dedicated to/or was dedicated to, at the time of the facts herewith referred to, to the business of engineering consulting.

10. Mr. Héctor Luis Rivas was President and Owner of HLRA, a corporation organized by the laws of the Commonwealth of Puerto Rico. Mr. Héctor Luis Rivas currently lives in Cuba and it has not been possible to detain him for the criminal case

described in paragraph 14, infra, with which he has been charged.

11. Through an "Agreement" made on November 18, 1996, ENTEC took on the obligations and responsibilities of HLRA in the "Agreement" with the CRIM.

12. On July 20, 1995, Mr. Eduardo Burgos and the consortium composed by ENTEC, CEPI and HLRA (hereinafter the "Consortium") signed a contract entitled "Agreement". Through said agreement, CRIM contracted the Consortium, composed of the defending companies, to design, develop, install and implement a digitalized land registry system known as "LAND INFORMATION MANAGEMENT SYSTEM" (hereinafter "LIMS"). The amount agreed to for performing this project was approximately fifty-six million forty-two thousand three hundred fifty-two dollars ($56,042,352.00).

**Nullity of the "Agreement" due to**

**Fraud, Lack of Consent and/or Illicit Cause**

13. On August 8, 2000, Mr. Burgos, the natural persons herewith accused, and others, were accused before the Federal District Court of Puerto Rico for violations to sections 1951, 1956, and 1957 to Title 18 of the United States Code. United States v. Bernardo Negrón Montalvo et al, Criminal no. 00-CR-660 (HL) (2000) (hereinafter, "the indictment"). (See Exhibit 1).

14. Between June 1994 and March 2000 the herewith defendants Bernardo Negrón, Margarita Sanfeliz Wu, Habibe, Sr., Habibe, Jr., Héctor L. Rivas Colon, John Paul Stephens, Eduardo Burgos Lebrón, Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Carlos Serra Vélez, Benjamin Wu and others conspired amongst themselves and with Mr. Nelson Soto so that Bernardo Negrón,

Eduardo Burgos, Carlos Serra, Cándida Rodríguez, Wanda Rodríguez and Margarita Sanfeliz Wu would receive money and expensive items from Mr. Habibe, Sr., and Habibe, Jr., Héctor Rivas and John Paul Stephens in exchange of securing that the Consortium would be awarded the contract for the LIMS project, that the price that the Consortium established for the LIMS project would be approved and that the Consortium would not have any difficulties in collecting the submitted invoices for the LIMS project.

15. At the time of conducting this contract, object of this lawsuit, Mr. Bernardo Negrón Montalvo was the Mayor of the municipality of Villalba and also member and president of the Governing Board of the CRIM.

16. On or about July, 1994, Mr. Bernardo Negrón introduced Mrs. Sanfeliz Wu to Mr. Burgos.

Mr. Negrón informed and instructed Mr. Burgos that Mrs. Sanfeliz Wu be hired as consultant to the CRIM.

17. From June 1994 thru March 2000, Mrs. Margarita Sanfeliz Wu worked as consultant and advisor to the CRIM.

18. On or approximately June 28, 1995, Mrs. Sanfeliz Wu was hired to serve as consultant and work directly with the LIMS project.

19. At different intervals of time between July 1996 and July 31, 2000, the CRIM hired Urbanística, LTD, whose contracts were subscribed by Mrs. Margarita Sanfeliz, for consulting and advisory services with the LIMS project.

20. Mrs. Sanfeliz Wu was the President of Urbanística, Ltd., a corporation organized by the laws of the state of Virginia.

21. Mr. John Paul Stephens Rexach was a business partner of Mr. Rivas. As a matter of fact, Mr. Stephens appeared in court as Vice President of HLRA in the contract in which HLRA yields its rights and obligations to CEPI with respect to the LIMS contract, on November 18, 1996.

22. Mr. Stephens was the President and owner of J.P. Stephens and Associates, Inc. (hereinafter "J.P. Stephens"). J.P. Stephens was involved in the business of computer consulting.

23. Mrs. Cándida Rodríguez Larrendowtte, worked as Budget Director and later as the CRIM's Sub-Director. As a matter of fact, Mrs. Rodríguez held the title of Director of Budgeting and Operational Audit from July 1, 1993 to April 1, 1994, when she was named Executive Director Assistant II of the finance area of the CRIM. She held this position until August 1, 1995, when she was named

Sub-Executive Director for the CRIM. She resigned on January 31, 2000.

24. Mrs. Wanda Rodríguez was the Director of the Finance Department for the CRIM. As a matter of fact, Mrs. Rodríguez held such position from July 16, 1996 thru July 1, 1998 and from February 1, 2000 thru September 1, 2000, when she was suspended from work and salary until her destitution on October 4, 2000. Before February 1, 2000, Mrs. Rodríguez held several positions at the CRIM; namely, from July 16, 1993 thru January 1, 1994, Chief of Unit I; from January 1, 1994 thru March 16, 1994, Budgeting and Operational Audit Assistant; from March 16, 1994 thru July 16, 1996, Chief of Unit II. Afterwards, as previously mentioned, she was named Finance Director from July 16, 1996 thru July 1, 1998 when she was named Director of the Operational Services Area from

February 1, 2000, when she was again named Finance Director, as previously referred.

25. Mr. Carlos Serra Vélez was the mayor of Corozal and was member of the Governing Board of the CRIM. Mr. Serra Vélez was member of the mentioned Board from 1993 thru the year 2000.

26. Mr. Benjamin Wu was computer technician and the husband of co-defendant Margarita Sanfeliz Wu.

27. On or about June, 1994, Mr. Nelson Soto, Mr. Habibe, Sr., Mr. Habibe, Jr., Mr. Rivas and Mr. Stephens, met and agreed to create a consortium under the name of Entec/Intergraph ("Consortium"), with the purpose of submitting to the CRIM a proposal for the LIMS project, since this had been promised to Mr. Nelson Soto by Mr. Bernardo Negrón.

28. On or about November or December, 1994, Mr. Habibe, Jr., prepared and submitted a model of his Request for Proposal to Mrs. Sanfeliz Wu. This model was prepared accordingly, so that the Consortium would meet the requests of the LIMS project.

29. On or about December, 1994, Mrs. Sanfeliz Wu prepared and submitted to the CRIM a Request for Proposal based on the information that Mr. Habibe, Jr., had furnished.

30. On or about February 15, 1995, the Consortium submitted a proposal to the CRIM for the LIMS project.

31. On or about February 15, 1995, Mrs. Sanfeliz Wu submitted to the members of the Evaluation Committee of the CRIM, mentioned Request for Proposal, based on the information that Mr. Habibe, Jr., had furnished. Also, Mrs. Sanfeliz

Wu submitted to the Evaluation Committee of the CRIM, the proposal for the Consortium and the proposal of another company.

32. On or about February, 1995, Mrs. Sanfeliz Wu submitted Mr. Habibe, Jr., a copy of the proposal submitted by the opponent of the Consortium, in order for Mr. Habibe, Jr., to evaluate and inform its' deficiencies to Mrs. Sanfeliz Wu.

33. On or about March 6, 1995, Mrs. Sanfeliz Wu prepared and submitted to the CRIM a general evaluation of the Consortiums' proposals and its' opponent, based on the information furnished by Mr. Habibe, Jr. This evaluation was submitted to the CRIM for a final selection of the contestant to whom it would be permitted to continue to the next phases of the evaluation process.

34. The indictment turns up, that on or about March 6, 1995, Mrs. Sanfeliz Wu prepared and

submitted to Mr. Nelson Soto a copy of the letter disqualifying the other company that had submitted its' proposal for the LIMS project. That same day, Mr. Burgos sent said disqualifying letter.

35. On or about April 4, 1995, Mr. Burgos and Mrs. Sanfeliz Wu notified the Consortium that they had been selected to proceed to the next phase of the evaluation process for the LIMS project; namely, the visit by members of the CRIM to the principal offices of Intergraph in the Continental United States.

36. On or about May 12, 1995, Mrs. Sanfeliz Wu and Mr. Burgos sent a letter to the Consortium requesting that they submit a "Price Proposal and Explanation Cost" to the CRIM for the LIMS project.

37. On or about May 17, 1995, Mrs. Sanfeliz Wu requested the Board of Directors of the CRIM to designate a Negotiating Committee to evaluate the

"Price Proposal and Explanation Cost" submitted by the Consortium. This Committee eventually included Mr. Bernardo Negrón and Mr. Carlos Serra.

38. On or about May 22, 1995, Mr. Habibe, Jr. and Mr. Héctor Rivas and Mr. Nelson Soto, on behalf of the Consortium, submitted a report to the CRIM with the details of a proposal of price and costs for the LIMS project for the amount of approximately $56 million dollars. This proposal was evaluated and approved in its entirety by Mrs. Sanfeliz Wu.

39. On or about May 25, 1995, Mrs. Sanfeliz Wu presented her evaluation of the price and costs proposal of the Consortium, to the Negotiating Committee of the CRIM. On this same date, Mr. Negrón, Mr. Carlos Serra and Mr. Rafael Cordero approved the price and costs proposal of the Consortium.

40. On or about June 21, 1995, Mrs. Sanfeliz Wu notified the Governing Board of the CRIM of the intention to grant the LIMS project to the Consortium.

41. On or about July 18, 1995, Mrs. Sanfeliz Wu submitted before the Governing Board of the CRIM a positive analysis of the terms and conditions of the contract that would be awarded to the Consortium for the LIMS project. The Board was emphasized all the time that it was a self-liquidation project.

Mrs. Sanfeliz Wu informed Dr. Eduardo Burgos the he would receive $500,000.00 in exchange for not interfering with the grantor of the contract and to expedite the disbursements to the Consortium under him.

42. As previously said, on July 20, 1995, Eduardo Burgos and the Consortium composed of

Entec Corporation, CEPI and Héctor Luis Rivas and Associates, signed a contract titled "Agreement". By means of said agreement, the CRIM was hiring the Consortium, for the design, development, installation and implementation of mentioned LIMS project. The amount agreed for achieving this project was approximately fifty-six million dollars ($56,042,352.00).

43. The Consortium would be paid the agreed money for the LIMS project, through invoices submitted to the CRIM, according to a plan ("schedule") of payments. This plan considered bi-weekly payments of identical monthly amounts, instead of collections as usual, considered payments corresponding to the completed work.

44. Once the Consortium started to receive the agreed monies in the contract with the CRIM, the principals and associates of the defending companies

would compensate Mr. Bernardo Negrón, Mr. Eduardo Burgos, Mrs. Margarita Sanfeliz Wu, Mrs. Cándida Rodríguez, Mrs. Wanda Rodríguez, and Mr. Carlos Serra for having granted the contract, for holding the contract and facilitate the payments process of the contract. As a matter of fact, Mr. Burgos accepted the previous statement as true. See Exhibit 2, "Change of Plea Hearing", of Mr. Eduardo Burgos, when pleading guilty to 3 charges, page 33, lines 16-20; and page 37, lines 2-4.

45. The compensation granted to the persons mentioned in the preceding paragraph, was through but not limited to, cash, checks, payment for personal expenses, payment for home improvements, political contributions, travel and airplane tickets, cars and a boat for Mr. Burgos.

46. The indictment details payments to the following persons, made to them by different persons

and/or entities; (a) payments to Mr. Bernardo Negrón amounting to approximately $99,393.85; (b) payments to Mr. Burgos amounting to approximately $238,500.00; (c) payments to Mrs. Sanfeliz Wu and/or through her husband Mr. Wu and/or Urbanística, Ltd., amounting to approximately $484,118.94; (d) payments to Mr. Serra amounting to $15,189.00; (e) payments to Mrs. Cándida Rodríguez amounting to $89,000.00; and (f) payments to Mrs. Wanda Rodríguez for $20,000.00. The indictment pleadings are incorporated by reference, in particular paragraphs 48 thru 115 that detail what is relative to the payments resulting from bribery and/or extortion, the day, the person and/or entity who made the payment, the beneficiary or beneficiaries of said payments, the quantity and form and/or the description or concept of the payment made.

47. The compensations previously described were made in direct payments to Messrs. Bernardo Negrón, Eduardo Burgos and Carlos Serra and to Mrs. Sanfeliz Wu, Cándida Rodríguez, Wanda Rodríguez, or to persons designated by them to whom they owed monies or through third parties.

48. On or about December 5, 1997, Mr. Burgos and Mr. Habibe, Sr., opened a checking account at Banco Santander de Puerto Rico (Santander Bank of Puerto Rico), by the name of Active Consulting, Inc., with the purpose of depositing and withdrawing money paid by Mr. Habibe, Sr., to Mr. Burgos. Active Consulting, Inc., did not get involved in business and it was a mere cover-up. Mr. Habibe, Sr., was the President of Active Consulting, Inc.

49. On March 20, 2001, Mr. Burgos pleaded guilty of the violations blamed in charges 1, 18 and

26, consistent on violations to sections 1951 ("interference with commerce through extortion brought about by economic fear and/or by color of official authority"), 1956 and 1957 (both related to "involvement in monetary transactions with properties derived from criminal activities") of Title 18 of the United States Code. In the hearing held in the Federal Court of the District of Puerto Rico, Mr. Burgos accepted as true, among others, the following facts:

> Had this case gone to trial, the United States would have proven beyond a reasonable doubt that on or about June, 1994 and continuing through in or about March, 2000 in the District of Puerto Rico and elsewhere, the Defendant, Eduardo Burgos Lebrón, while serving as the Executive Director of Centro de Recaudaciones e Ingresos Municipales, also known as CRIM, participated in a conspiracy

with Bernardo Negrón Montalvo, Margarita Sanfeliz Wu, Tommy R. Habibe, Sr., Tommy O. Habibe Vargas, Hector Luis Rivas, John P. Stephens Rexach, also known as "Jacko", Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Carlos Serra Vélez, Benjamín Wu, Haydee Figueroa Guzmán and José Rafael Vázquez and others, to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm in violation of Title 18, United States Code, section 1951.

Essentially, Defendant Eduardo Burgos-Lebrón would and did request and receive sums of monies or third party services from co-defendants Tommy O.

Habibe Vargas, Tommy R. Habibe Arias, and Héctor Luis Rivas, who were contractors that had obtained a $56,000,000.00 contract from CRIM related to and worked on a system for CRIM known as the Land Information Management System, also known as the LIMS project.

The Defendant requested and received these sums of money or third-party services in exchange for him assisting in the approval of the contract for the LIMS project and for his approval and authorization of payment vouchers in relation to the LIMS project. United States v. Eduardo Burgos Lebron, Criminal No. 00-660 (2001). (See Exhibit 2, underlined by us).

50. On July 25, 2001, Mr. Habibe, Sr., pleaded guilty to the violations charged on him on charges 1, 18 and 26 of the indictment, Exhibit 3. This is are the same charges to whom Mr. Burgos pleaded guilty.

**Arbitration**

51. The contract between the CRIM and the Consortium, composed by ENTEC, CEPI and HLRA for the LIMS project, dated July 20, 1995, includes an arbitration clause. Mentioned clause literally transcribed, provides, in its pertinent part, as follows:

> 22. Arbitration.
>
> 22.1 Arbitration...
>
> 22.2 Judgment: All disputes, controversies and questions that may arise under this Agreement that

cannot be solved satisfactorily between the Contractor and CRIM shall be resolved by arbitration conducted in Puerto Rico in accordance with the Rule of the American Arbitration Association, by an arbitrator appointed by the Association. The arbitrator shall be governed by, and apply the substantive law of Puerto Rico and the findings shall be final and binding upon both the Contractor and CRIM and shall be a condition precedent to any right of legal action. Judgment on such award may be entered in any

court having jurisdiction thereof. The parties shall share the cost of arbitration.

22.3 The Contractor shall not cause a delay of the work during arbitration proceedings unless such delay is agreed to by both parties."

(See "Agreement", Exhibit 4, to page 20).

52. The "Agreement" between the CRIM and the Consortium says that the same will be governed and interpreted in the same fashion as the laws of the Commonwealth of Puerto Rico.

53. On September 20, 2000 the judicial entities here indicted initiated an arbitration procedure, through a document

titled "Demand for Arbitration", before the American Arbitration Association (hereinafter "AAA"), New York office in relation the agreement previously mentioned. (See Exhibit 5).

54. In account of the acquisition by ENTEC of the rights and obligations of HLRA in the LIMS contract, HLRA is not interested nor has the legal capacity to come between nor claim in relation to the issues and controversies subject of arbitration.

55. Because of information and/or belief, the AAA is a corporation organized under the laws of New York.

56. The request for arbitration by the Consortium was submitted in New York.

57. In this arbitration petition, the entities ENTEC, CEPI and HLRA requested to

the CRIM payment for several sums of money allegedly owed due to performed work, maintenance expenses, materials and equipment and change orders specifications of the project. Also, they claimed damages allegedly caused by the Consortium for breach of contract, delays in payments and libel. The total remedy solicited by the defending corporations in its arbitration petition exceeds the amount of ten million dollars ($10,000,000.00).

58. On September 28, 2000, Mrs. Raquel Olivo, case manager for the AAA, sent a letter to confirm that she had received the mentioned arbitration petition and sent a copy of the "International Arbitration Rules" of the AAA.

59. On October 23, 2000, Manuel Pérez García, the representing Attorney for the CRIM until approximately April, 2001 sent a letter to Mrs. Olivo to inform her that he was the legal representative for the CRIM in the case. Also, in this letter, Atty. Pérez requested a time extension of thirty (30) days before holding the agreed telephone conference, since the CRIM documents related with the case had been "subpoenaed" by the Federal Grand Jury.

60. To this date it is possible that some of the documents that were handed over to the Grand Jury and/or Federal Bureau of Investigations (FBI) in compliance with their orders to submit, may still be under the custody of the Grand Jury and/or FBI. The requested documents by the Grand Jury

and/or FBI are those referred to in the "subpoenas", here attached identified as Exhibits 7 thru 12, that constitute the majority, if not all of the CRIM documents related to the LIMS project.

61. Through his behalf, the attorney for the claimed party in the arbitration procedure requested that, at the moment of choosing the arbiters to be named, these would be examined in depth specifically regarding: commercial contacts or akin to the Government of the Commonwealth of Puerto Rico, the CRIM, its officers and/or agents and/or elected officials and/or members of any political group. The letter submitted by this lawyer to the AAA requests, in its' relevancy:

> that the list of arbitrators be scrutinized for

neutrality and specifically for prior and/or current and/or potential commercial or similar contacts with the government of the Commonwealth of Puerto Rico, the CRIM and/or officers and/or agents and/or elected officials or members of any political group.

62. As a result of this request the officers in charge of deciding the controversies that will be presented in the arbitration would be completely unfamiliar with the indictments, bribes, bribe offers and illegal payments to which the LIMS project was subject to and they would be led to erroneously believe that the issue under arbitration is a mere issue of breach of contract.

63. On December 11, 2000, the previous attorney for the CRIM answered the

arbitration request and according to the issued order by the arbitration panel, the undersigned lawyers were compelled to amend the same on July 13, 2001, due date for that as per the scheduling order of the arbitration panel.

64. On March 21, 2001 the AAA named three (3) arbitrators, whose language is in English and who live in the Continental United States.

65. There are fixed prices for the submittal of claims related to the quantity of the claim. Between the fee for the "Initial Filing Fee" and the fee for the "Case Service Fee", the total amounts to be paid for both items ("Total Fee"), are itemized as follows:

For filing one claim of
Total Fee

$0 up to $10,000
$500
$10,000 up to $75,000
$750
$75,000 up to $150,000
$2,000
$150,000 up to $300,000
$3,750
$300,000 up to $500,000
$5,500
$500,000 up to $1,000,000
$8,000
$1,000,000 up to $7,000,000
$11,000
$7,000,000 up to $10,000,000
$16,000
Over $10,000,000
You must contact

the AAA

66. Even more, the AAA demands the payment of court fees, that include the following: (a) deposits previous to the hearing to cover ordinary litigation costs, that may include the fees of the arbitrators, the costs of assistance as requested by the Arbitration Court, including its experts, the fees of the

administrator, a reasonable sum for lawyers fees of the party that results successful and any other fee incurred in granting a provisional remedy or of emergency; (b) additional deposits by the parties. To this date, the AAA has requested the CRIM the payment of $78,700.00.

67. On January 31, 2001, Norman Foy, Attorney was named Executive Director of the CRIM and started his work as such on February 2, 2001.

68. On April 2, 2001, the previous attorney for the CRIM informed the AAA that his professional services contract with the CRIM had been cancelled and he requested that he be released from the legal representation to the CRIM.

69. On April 12, 2001, the AAA notified a "Scheduling Order" with the following due dates:

July 13, 2001 – Last day to amend pleadings.

July 23, 2001 – Last day to answer amended pleadings.

October 1, 2001 – End of disclosure of evidence.

October 15, 2001 – Due date to submit to the arbitration panel a document in which the parties agree to the legal controversies and facts that will be solved by arbitration.

November 1, 2001 – the parties must exchange witnesses and experts list, and the reports of the same. Also, parties must exchange sworn statements from people who will testify in this way and numbered exhibits.

November 9, 2001 – Exchange pleadings prior to the hearing, list of witnesses and rebuttal experts, with reports of these experts.

November 9, 2001 – Due date to present motions.

November 16, 2001 – Last day for additional disclosure of evidence by experts.

November 19, 2001 – Last day to answer motions.

December 4, 2001 – Arbitration hearing in Puerto Rico.

70. The underwriting attorneys, when they took upon the CRIMs' legal representation, requested a forty-five (45) days suspension explaining that an evaluation process was being held by the CRIMs' new administration and their lawyers in relation to see if the alleged contract in the arbitration lawsuit had been obtained through fraud, from and through the ex-officers of the CRIM in conspiracy with the officers of the defendant corporations, all of it in lieu of the criminal indictment. Among other things, it was informed that they were in the process of examining if the validity of the arbitration

agreement could be challenged in said contract. The panel was informed about the guilty plea made by Mr. Burgos, former Executive Director of the CRIM. The request was refused and the previously notified schedule was confirmed.

During telephone conference with the arbitration panel regarding the status of the proceedings, to which the CRIM has especially appeared in court, without submitting to the panels' jurisdiction, the CRIM has requested the cease and/or overruling of the arbitration procedures due to the guilty pleas made by Mr. Burgos Lebrón and T. Habibe and the resulting nullity of the contract and ensuingly by the arbitration clause included in this.

Nullity of the "Agreement" Due to it Being Contrary to the Organic Law of the CRIM

71. The August 30, 1991 Law, supra, binds the CRIM to collect, receive and distribute public funds belonging to the municipalities, deriving from the basic income tax contributions and the additional income tax contributions imposed over all personal property and real estate property in Puerto Rico. See 21 L.P.R.A., secs. 5802 and 5815.

72. The funds from the income deriving from such income tax contributions over the properties and the allocations from subsidies and the lottery should be deposited in a trust with the Government Development Bank and distributed according to the established procedures in articles 16 thru 18 of Law 80, supra, 21 L.P.R.A. secs. 5815-5817.

73. The disbursements authorized by law against mentioned municipal funds on

account of real estate income tax contribution and the allocations on account of subsidy and lottery, are held in accordance with a priority order established in article 17 of Law 80, supra, 21 L.P.R.A. sec. 5816. The retentions that the CRIM can make to cater to its operation and operation expenses are the fourth priority in accordance to mentioned Law.

74. In relation to the deduction for operational funds of the CRIM, article 22 of mentioned Law 80, supra, specifically establishes that the CRIM is authorized to annually separate an amount on account of operational expenses, with a maximum of 5% of the total annual collections on account of property income tax of the preceding fiscal year.

75. The CRIM, on the other hand, has the obligation to keep up to date the land registry for the real estate properties of each municipality. That undertaking is an essential part of the operational expenses and performance of the CRIM. See article 4 of Law 80, supra, 21 L.P.R.A. sec. 5803.

76. The law does not authorize the CRIM to deduct an additional item from the income received from the municipalities, without their consent, to meet the financing cost of keeping up to date the land registry through the LIMS project, if this deduction has the effect of exceeding the established 5% specifically by article 22, supra, as the maximum to be retained for the operational expenses and performance of mentioned entity.

77. During fiscal years 1996-97, 997-98, 1998-99 and 1999-2000, without legal authority and exceeding the limitations established by law, with respect to the authority of retaining monies from the income of the municipalities, the CRIM retained from the public funds belonging to the municipalities an additional deduction identified as "LIMS Operating Expenses". For fiscal year 1996-97 retained funds from the municipalities were $5,102,195; for fiscal years 1997-98, 1998-99 and 1999-2000 it was retained $10,204,385 respectively. (See Exhibits 12, 13, 14 and 15, respectively).

78. In addition, for its operational expenses, the CRIM retained $16,815,632.00 in fiscal year 1996-97; $18,731,419.00 in fiscal year 1997-98; $18,679,341.00 in fiscal year

1998-99; and $18,679,341 for fiscal year 1999-2000.

79. The result from the deductions made by the CRIM for the LIMS project together with the deductions for its operational expenses, was that for the fiscal years 1996-97-, 1997-98, 1998-99 and 1999-2000, without legal authority, the CRIM retained 6.38%, 8.57%, 4.46% and 3.09% respectively, from properties income tax contribution total.

80. The deductions on account of "Operational Expenses of the CRIM" together with the deductions on account of "LIMS Operational Expenses" constitute, for each and everyone of the fiscal years mentioned, retentions in excess of the five percent (5%) authorized by Law.

81. The deductions for the financing of the LIMS project together with the deductions on account of operational expenses that the CRIM makes to the public funds that must be allowed to the municipalities, exceeding the 5% as per the Law, constitute an illegal action and "*ultra vires*" by the CRIM, resulting in irreparable damage, since it immediately impedes the municipalities from using its properties, that is of vital public funds for financing the services that the municipalities offer.

82. In addition, in the Request for Proposal or ("RFP") for the LIMS project some areas were included that by Law, the CRIM does not have responsibilities over, as for example, that the system could be used by

multiple departments and agencies of the Commonwealth of Puerto Rico.

83. Another example of the preceding "Request for Proposal" is: "The LIMS must provide the ability to implement and integrate future applications, such as executive information system, emergency management, emergency vehicle dispatching, infrastructure facilities modeling and management, road design, storm/sewer modeling and management, incident analysis, permit tracking, solid waste handling and site design, work order management, and parks and recreation facilities design and management."

84. No disposition in enabling the CRIMs' law exist for this organism, to involve and finance activities that are not directly related with the notification to the taxpayers

of imposing taxes with respect to properties, the collection of payment of mentioned imposition, the land appraisal of all the properties and the distribution of assigned or collected funds through legislative disposition.

85. To include in the description of the scope of the project some work that is totally foreign to the responsibility granted by law to the CRIM is contrary to the organic law of mentioned organism and lead to the payment by the CRIM to services whose cost should not be financed with municipal funds, therefore the contract is null since it is contrary to law and to public order.

86. As a consequence of including in the request for proposal, in the granted cost estimate and in the "Agreement" of the LIMS project, the rendering of services that are not

contemplated in the CRIMS' Law, nor in any of the laws that govern municipal activities, the CRIM has disbursed illegal funds in excess of which it is authorized by its' organic law. For example, as it is itemized in the document for cost proposal as submitted by the Consortium on May 22, 1995, more than $2.3 million dollars have been disbursed in direct expenses for the subsystems PRISM and PERMITS. The computerized programs PRISM and PERMITS are of no use for the CRIM in the performance of its obligations under its' organic law. There are other indirect costs involved in the administration, accounting, evaluation or reports. The total expense for the undue inclusion of these programs has not yet been accounted for.

87. The open bidding held for granting the LIMS project is also null in violation of the regulations for open bids of the CRIM.

I. FIRST CAUSE OF ACTION

Nullity of the Contract between the CRIM and the Consortium

88. All and every one of the pleadings of the lawsuit in their Factual Context are included here, as if they were transcribed.

89. The "Agreement" related to the LIMS project was a result of fraud and a conspiracy for the personal profit of Mr. Eduardo Burgos, acting as Executive Director of the CRIM, and the defendants. This fraud constitutes an illicit form of the origins of the contract for the LIMS project.

90. The "Agreement" between the CRIM and the Consortium is null and inexistent by being contrary to the law, to the morals and to the public order.

91. The fraudulent actions of Mr. Eduardo Burgos and the officers of the CRIM in relation to granting the contract, as held between the CRIM and the defending corporations, as well as the payments of the invoices submitted under the same, are ultra vires and therefore null for being contrary to the law, the morals and the public order.

92. The CRIM does not have the authority by law to agree to a contract held in violation of the law and the public order, nor to make retentions in excess of 5% of its' annual budget in account of operational expenses.

93. The July 20, 1995 contract held between the CRIM and the defendants is null ab initio, and therefore, does not exist for lack of consent and cause and for violation of the regulations of the CRIM with respect to its open bids.

94. The Consortium must return to the CRIM, what this has collected and the payment for the damages sustained by the CRIM stemming from the null contract.

II. SECOND CAUSE OF ACTION

Nullity of the Arbitration Clause

95. All and every one of the pleadings of the lawsuit in their Factual Context are included here, as if they were transcribed, as well as all and every one of the pleadings of the lawsuit in the First Cause of Action.

96. As the preceding pleas, on July 20, 1995 a contract was granted between the CRIM and the defendants, entitled "Agreement".

97. Section 22 of this contract includes an arbitration clause in which it is agreed that all the legal disputes or controversies arising among the parties must be solved before an arbitrator of the American Arbitration Association ("AAA").

98. The contract held between the CRIM and the defendants is null ab initio and does not exist for lack of consent and cause and for being contrary to the law, to the morals and to the public order.

99. The arbitration clause included in mentioned section 22 of this contract is null

and does not exist because the contract in which it is included is null and does not exist.

100. What proceeds, as an issue of law, is that the arbitration clause in section 22 of the contract between the CRIM and the Consortium composed of the defending corporations be declared null and inexistent, and an immediate and permanent suspension be ordered, of the arbitration proceedings initiated by the Consortium before the AAA.

## III. THIRD CAUSE OF ACTION

### Nullification of Arbitration in Process

101. All and every one of the pleadings of the lawsuit in their Factual Context are included here, as if they were transcribed, as well as all and every one of the pleadings of the lawsuit in the First Cause of Action and the Second Cause of Action.

102. The supposed arbitration clause specifies that arbitration will be held in Puerto Rico. To that effect, in its pertinent part, it reads "disputes shall be resolved...by arbitration conducted in Puerto Rico..."

103. As an alternative, and if the "Agreement" and/or the arbitration clause is not declared null, the arbitration started by the defending corporations must be annulled due to the fact that it was established outside of Puerto Rico that being against the specific dispositions in the supposed arbitration clause.

104. Even more, the expenses of the procedure constitute an unreasonable expenditure of public funds. The CRIM can and should present the controversies related to the LIMS contract before the courts of Puerto

Rico without the enormous and unreasonable litigation expenses that imply the arbitration agreed to by a former public officer that pleaded guilty to federal crimes in relation, precisely, to the contract that includes an arbitration clause.

## IV. FOURTH CAUSE OF ACTION

### Funds Collection

105. All and every one of the pleadings of the lawsuit in their Factual Context are included here, as if they were transcribed, as well as all and every one of the pleadings of the lawsuit in the First, Second and Third Cause of Action.

106. As an alternative, and if the "Agreement" is not declared null, the CRIM complied with the dispositions of mentioned "Agreement" and the Consortium failed to

comply, having received payments in excess of the work done, therefore the CRIM has nothing to owe to the Consortium and the Consortium must return to the CRIM all that was collected in excess.

107. The CRIM has paid twice for the same work, labor and/or activities. In the work plans, exist an overlap of activities between the three members of the Consortium, which raises the price of the LIMS project. These payments constitute an unfair abundance of wealth by the Consortium and the same must return to the CRIM, the quantities that have been paid in excess.

108. Up to this date, the CRIM has disbursed to the Consortium, charging it to the LIMS project, the sum of $50,726,133.00. The

Consortium has invoiced the sum of $52,495,279.00 until now.

109. The worth or the price of the work done and turned in by the Consortium to the CRIM is less than the sum paid for by the CRIM to the Consortium.

110. The CRIM has paid the Consortium in excess more than what it should have paid. Said amount is still object of analysis and accounting.

111. In addition, the CRIM cannot use the data that has been delivered by the Consortium.

112. Due to all of the preceding, the Consortium owes the CRIM an indeterminate amount, but that is estimated to in no less than one hundred million dollars ($100,000,000.00).

## V. FIFTH CAUSE OF ACTION

### Inexistence of Change Orders

113. All and every one of the pleadings of the lawsuit in their Factual Context are included here, as if they were transcribed, as well as all and every one of the pleadings of the lawsuit in the First, Second, Third and Fourth Cause of Action.

114. In the alternative, and if the contract of the LIMS project is not declared null, it is requested that the Change Orders alleged by the Consortium be declared null due to the following reasons:

115. The change order(s) do not follow nor do they comply with the procedures for with which they were prepared in the "Agreement". Neither does a document or contract in writing, through which the CRIM

had accepted to pay the amounts that the Consortium now claims in account of change orders.

116. The change orders were a result of the fraud between the defendants.

117. In the alternative, if the change order(s) be(are) declared valid, this (these) do not amount to $8.0 millions.

118. The Consortium presented the CRIM and they justified a change order in the LIMS project, allegedly because the CRIM was interested in obtaining a multi-agency and multi-purposed project. It was claimed that for that purpose a change order of the specifications of the aerial photogrammetry was needed. According to the documents, the change in design entailed an increase in the cost of the project amounting to $8.0 millions.

119. From its origins, when the request for proposal was requested, if at all erroneously, that the LIMS system had to satisfy the needs, not only of the CRIM, but of a number of agencies as well, since it was claimed that the project was self-liquidating.

120. The Consortium designed and prepared a quote for the LIMS project.

121. The CRIM does not have to pay for flawed design. The Consortium must assume the responsibility since it was the Consortium who designed and prepared a quote for the system since its beginnings.

122. In addition, a change in the design, in which what is primarily involved is a change in the height from which the aerial photos would be taken, cannot entail increases

in the cost of items not related to mentioned change.

## VI. SIXTH CAUSE OF ACTION

### Damages

123. All and every one of the pleadings of the lawsuit in their Factual Context are included here, as if they were transcribed, as well as all and every one of the pleadings of the lawsuit in the First, Second, Third, Fourth and Fifth Cause of Action.

124. The CRIM has sustained damages that are calculated in $100 million dollars, plus interest. These damages which have not been accounted for the moment with precision, but they are the result of the actions of the defendants, including, but without limiting to the supposed granting of a null and nonexisting contract, the supposed inclusion of

a null and nonexistent arbitration clause, the supposed approval of change orders and expenditures on the interests of the loan obtained for financing the LIMS project.

VII. SEVENTH CAUSE OF ACTION

VIOLATIONS TO THE LAW AGAINST

ORGANIZED CRIME AND

MONEY LAUNDERING OF THE

COMMONWEALTH OF PUERTO RICO

125. All and every one of the pleadings of the lawsuit in their Factual Context are included here, as if they were transcribed, as well as all and every one of the pleadings of the lawsuit in the First, Second, Third, Fourth, Fifth, and Sixth Cause of Action.

126. Law Number 33 of July 13, 1978, as amended, 25 L.P.R.A. secs. 971 and sigs., referred to as Law Against Organized Crime

and Money Laundering of the Commonwealth of Puerto Rico (hereinafter Law Against Organized Crime), in its section 971 (h) (d), grants a civil action clause and authorizes to compensate thrice the damages sustained to any one person that sustains damages to his business or property for violations to § 971 (b) of mentioned title.

127. The plaintiff has sustained damages for violations to the part of sections 971 (b) (c) and 971 (b) (e).

128. The co-defendants ENTEC, CEPI and HLRA are, or were at the time of the referred to facts in the lawsuit, enterprises or businesses as defined in the Law Against Organized Crime.

129. The union and/or group composed of ENTEC, CEPI, HLRA, Tommy Habibe, Sr.,

Tommy Habibe, Jr., Héctor Luis Rivas Colon, Eduardo Burgos Lebrón, Cándida Rodríguez, Wanda Rodríguez, Bernardo Negrón, Carlos Serra, Margarita Sanfeliz Wu, Benjamín Wu and John Paul Stephens Rexach constituted, at the time of the facts referred to in the lawsuit, an enterprise or business as defined by the Law Against Organized Crime.

130. The union and/or group composed of Tommy Habibe, Sr., Tommy Habibe, Jr., Héctor Luis Rivas Colon, Eduardo Burgos Lebrón, Cándida Rodríguez, Wanda Rodríguez, Bernardo Negrón, Carlos Serra, Margarita Sanfeliz Wu, Benjamín Wu and John Paul Stephens Rexach, constituted, at the time of the facts referred to in the lawsuit, an enterprise or business as defined in the Law Against Organized Crime.

131. The co-defendants Tommy Habibe, Sr., Tommy Habibe, Jr., Héctor Luis Rivas Colon, Eduardo Burgos Lebrón, Cándida Rodríguez, Wanda Rodríguez, Bernardo Negrón, Carlos Serra, Margarita Sanfeliz Wu, Benjamín Wu and John Paul Stephens Rexach are persons as defined by the Law Against Organized Crime.

132. The persons referred to in paragraph 133 executed organized crime activities consistent with aggravated illegal appropriations of goods and/or funds of the CRIM and/or bribe and/or extortion, as defined in the Law Against Organized Crime.

133. The activity pattern of organized crime was done and/or executed in or about August, 1995 until in or about March, 2000.

134. The co-defendants mentioned in paragraph 133, however, initiated the conspiracy that led to the illegal appropriation and/or the bribes and/or the extortions since or about June, 1994.

135. The activities pattern of organized crime, consisting of aggravated illegal appropriation of funds and/or goods of the CRIM, bribe and/or extortion, consisted and/or included the payments and transactions that are itemized in Exhibit 16 of this Lawsuit.

136. The co-defendant Mr. Tommy Habibe Arias accepted when pleading guilty in Criminal Case No. 00-660 (HL), U.S. v. Tommy Habibe Arias and others, to having made the payments and transactions that are itemized in Exhibit 16.

137. The activities pattern of organized crime consistent with illegal appropriation of funds and/or goods of the CRIM, bribe and/or extortion, consisted and/or included too the payments and additional transactions that are itemized in the enclosed indictment marked as Exhibit 1.

138. The persons named in paragraph 133 were employed by and/or associated to the enterprises and/or businesses referred to in paragraphs 130 and/or 131 and/or 132 of this Lawsuit; and participated, directly or indirectly, in addressing the issues of said enterprise(s) through an activities pattern of organized crime, in violation of section 971 (b) (c) of Title 25 of L.P.R.A.

139. The co-defendants Tommy Habibe Arias, Tommy Habibe, Jr., Héctor Luis

Rivas, Eduardo Burgos, Cándida Rodríguez, Wanda Rodríguez, Bernardo Negrón, Carlos Serra, Margarita Sanfeliz Wu, Benjamín Wu and John Paul Stephens Rexach by themselves and through others, made financial transactions using goods originating, deriving or linked with specific illegal activities, as defined in the Law Against Organized Crime section 971 (a) (p) (i) (regarding control or ownership of personal property related, obtained, derived, originating or in any way linked to violations to Title 33, Penal Code, specifically the crimes of aggravated illegal appropriation of the goods and/or funds of the CRIM and/or bribery and/or extortion; section 971 (a) (p) (iii) (consistent with hiding assets and commit the crimes of extortion and/or bribery); and section 971 (a) (p) (iv);

(consistent with holding fraudulent banking transactions); and all of it in a deliberate way and/or knowing that the financial transaction was planned in part or in whole to hide and/or pretend the nature, location, origin, title or control of the earnings of the illegal activities previously referred to, in violation of section 971 (b) (e) of the Law Against Organized Crime.

140. The specific illegal activities known until now, are itemized in Exhibit 1 and Exhibit 16.

WHEREAS, it is very respectfully requested of the Honorable Court that prior to the pertinent legal process Sentence be dictated granting the lawsuit and granting the solicited remedies, as follows:

1. Ordering the suspension of arbitration that is being held in New York, and;

2. Declaring null and inexistent ab initio the contract entitled "Agreement" granted on July 20, 1995 and ordering the return of the loans and payment for damages sustained by the CRIM; and

3. Declaring null and inexistent the arbitration clause included in section 22 of mentioned contract and ordering the immediate and permanent suspension of the arbitration proceedings; and

4. Convicting the defendants to the joint payment of damages sustained by the plaintiff CRIM, as alleged in the Lawsuit and in conformity with the evidence to be presented.

5. In the alternative, and if the agreement is not declared null, declaring that the Consortium must return to the CRIM the amount that the CRIM has paid the Consortium, plus interests and the damages sustained by the CRIM, and declaring inexisting the change order, or, as an alternative, that this only amounts to $1.2 million.

6. Declaring as accepted the cause of action requested under the Law Against Organized Crime and convicting the defendants to pay thrice the damages granted by Law, the attorney's fees, the expenses and other costs.

7. Pronouncing any other judgment that proceeds by law in favor of the plaintiff.

8. Imposing the defendants with the payment of court costs and expenses of the litigation and a sum not less than $500,000.00 on behalf of attorney's fees.

In San Juan, Puerto Rico, on September 26, 2001.

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Member No.

**COMMONWEALTH OF PUERTO RICO**
**COURT OF FIRST INSTANCE**
**SUPERIOR COURT OF SAN JUAN**

| | |
|---|---|
| CENTRO DE RECAUDACIÓN DE INGRESOS MUNICIPALES<br>Plaintiff<br><br>V.<br><br>ENTEC CORPORATION, CONSULTA ECONOMICA Y PLANIFICACIÓN, INC., HECTOR LUIS RIVAS & ASSOCIATES, et al<br><br>Defendants | CIVIL NO. KPE-01-2012<br><br>REGARDING:<br><br>DECLARATORY JUDGMENT, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, NULLITY OF CONTRACT, LAW AGAINST ORGANIZED CRIME, DAMAGES |

**MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION REQUEST**

TO THE HONORABLE COURT:

Appears in court the plaintiff Centro de Recaudación de Ingresos Municipales (hereinafter 'CRIM"), through his lawyers who subscribe, and very respectfully expose, plead and request:

## I. RELEVANT FACTS

1. Together with the current motion a lawsuit has been presented requesting, among other things, that the contract held between ENTEC Corporation ('Entec"), Consulta Económica y Planificación ("CEPI") and Héctor Luis Rivas & Associates ("HLRA") (hereinafter jointly named as the "Consortium"), defending corporations and the plaintiff the CRIM, is null *ab initio*.

2. This request brought before this Honorable Court, is to consider halting the arbitration procedures initiated by the defending companies before the American Arbitration

Association ("AAA") on September 20, 2001 in New York.

3. As referred to in the lawsuit, on July 20, 1995, Mr. Eduardo Burgos, acting as Executive Director of the CRIM and the group of corporations referred to as the "Consortium", composed by the defending corporations, signed a contract entitled "Agreement". (See Exhibit 4 of the Lawsuit.) Through said agreement, the CRIM contracted the Consortium for the design, development, installation and implementation of a project for the digitalization of the land registry of Puerto Rico, referred to as "Land Information Management System" ("LIMS project"). The amount agreed to in preparing this project was approximately fifty-six million dollars and specifically ($56,042,000.00). The analysis made regarding subject project have demonstrated that this cost is way above the real cost of a project of this

nature. Also, it has been discovered that the CRIM has paid much more than the real value of the goods and services that the Consortium has handed in for the LIMS project.

4. The Consortium has submitted an arbitration request against the CRIM, claiming more than $10 million dollars for work done, maintenance work, change orders from the original specifications and damages on revenues not received, libel and loss of business. (See Exhibit 5 of the Lawsuit.)

5. The "Agreement" between the Consortium and the CRIM includes and arbitration clause, which literally translated, reads in its pertinent part or paragraph, the following:

22. Arbitration.

22.1 Arbitration...

22.2 Judgment: All disputes, controversies and questions

that may arise under this Agreement that cannot be solved satisfactorily between the Contractor and CRIM shall be resolved by arbitration conducted in Puerto Rico in accordance with the Rule of the American Arbitration Association, by an arbitrator appointed by the Association. The arbitrator shall be governed by, and apply the substantive law of Puerto Rico and the findings shall be final and binding upon both the Contractor and CRIM and shall be a condition precedent to any right of legal

action. Judgment on such award may be entered in any court having jurisdiction thereof. The parties shall share the cost of arbitration.

> 22.3 The Contractor shall not cause a delay of the work during arbitration proceedings unless such delay is agreed to by both parties".

6. The contract that includes the arbitration clause determines that the arbitration will be held in Puerto Rico. Nevertheless, the petitioners in arbitration, ENTEC, CEPI, and HLRA submitted an arbitration request in New York and the procedure is being conducted in mentioned state.

7. As it turns up in the enclosed lawsuit, the position of the CRIM is that the contract in which arbitration is based upon is null by lack of consent

and cause and for being contrary to law, to the morals and to public order. Several of the former officers of the CRIM whom negotiated and supervised this contract and the representatives of the defending companies, ENTEC, CEPI and HLRA, have been indicted of several federal crimes, among them, conspiracy to affect interstate commerce through extortion and to obtain money illegally agreeing to for fear of economic harm and/or under color of official right in violation of 18 USC § 1951 (a) (Conspiracy to interfere with commerce by extortion induced by economic fear and/or under color of official right); conspiracy to launder money, in violation of 18 USC 1956 (h) and others (See Exhibit 1 of the Lawsuit). Indictment in the case U.S. v. Bernardo Negrón Montalvo and others, 00-CR-660 (2000) (HL).

8. On March 20, 2001, the former Executive Director of the CRIM, Mr. Burgos, pleaded guilty to violations to sections 1951 and 1956 of Title 18 of the United States Code. In the hearing held in the Federal Court of the District of Puerto Rico, Mr. Burgos accepted as true, among others, the following facts:

> Had this case gone to trial, the United States would have
>
> > Proven beyond a reasonable doubt that on or about June 1994 and continuing through in or about March 2000 in the District of Puerto Rico and elsewhere, the Defendant, Eduardo Burgos-Lebrón, while serving as the Executive Director of Centro de Recaudaciones e (sic) Ingresos Municipales, also known as CRIM, participated in a conspiracy with Bernardo Negrón Montalvo, Margarita

Sanfeliz Wu, Tommy R. Habibe, Sr., Tommy O. Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, also known as "Jacko", Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Carlos Serra Vélez, Benjamín Wu, Haydeé Figueroa Guzmán and José Rafael Vázquez and others, to unlawfully affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm in violation of Title 18, United States Code, section 1951.

Essentially, Defendant Eduardo Burgos Lebrón would and did request and receive sums of monies or third party services from co-defendants Tommy O. Habibe Vargas, Tommy R. Habibe Arias, and

Hector Luis Rivas, who were contractors that had obtained a $56,000,000.00 contract from CRIM related to and worked on a system for CRIM known as the Land Information Management System, also known as the LIMS project.

The Defendant requested and received these sums of money or third-party services in exchange for him assisting in the approval of the contract for the LIMS project and for his approval and authorization of payment vouchers in relation to the LIMS project. *United States v. Eduardo Burgos Lebrón*, Criminal No. 00-660 (2001). (See Exhibit 2, pages 32-36 of the Lawsuit, our underlining).

9. On July 23, 2001 Mr. Tommy Habibe Arias pleaded guilty to violation of 18 U.S.C. 1951 (a) and 1956 (h).

10. Mr. Habibe Arias controls, or at least, used to control, and was the representative for ENTEC at the time of signing the "Agreement". On or about November 18, 1996 HLRA entrusted on ENTEC and ENTEC accepted and obtained HLRAs' responsibilities in relation to the execution, administration and charges for the work of HLRA in the contract between the Consortium and the CRIM. By information and belief, Mr. Habibe, Sr., on or about February thru June 1996 bought the CEPI shares from the heirs to Mr. Nelson Soto.

11. The "Agreement" related to the LIMS project, that includes the arbitration clause previously transcribed, was a result of fraud among

others, Mr. Eduardo Burgos, acting as Executive Director of the CRIM and the defendants.

12. ENTEC, CEPI and HLRA requested in the arbitration, that on the moment of choosing the arbitrators to be named, these would be scrutinized specifically on: similar commercial contacts with the government of the Commonwealth of Puerto Rico, the CRIM, its' officers and/or agents and/or elected officers and/or members of any political group. The letter submitted to this effect to the AAA, requests:

> "(t)hat the list of arbitrators be scrutinized for neutrality and specifically for prior and/or current and/or potential commercial or similar contacts with the government of the Commonwealth of Puerto Rico, the CRIM and/or officers and/or agents and/or elected officials or members of any political group".

13. As a result of this request the officers that would be in charge of deciding the controversies that would be presented in arbitration would be unaware of the indictments, libels, libel offers and illegal payments of which LIMS was subject to, which would lead them to believe erroneously that the subject matter under arbitration was another common issue of breach of contract. Even though, the alleged arbitration agreement, even when null, determined that the arbitration would be held in Puerto Rico.

14. On March 21, 2001, the AAA named three (3) English-speaking arbitrators, residents of the Continental United States.

15. The compensation for these arbitrators is the following:

(a) Attorney Ralph C. Anzivino: $1,200.00 daily for every hearing

day, prorated based on a day's labor of seven (7) hours ($171.42 per hour), starting on the first hearing.

Attorney Anzivino is to be compensated for all the time he has used in preparation for the hearing at a cost of $1,200.00 daily, prorated based in a workday of seven (7) hours. All the expenses related to the procedure, would also be reimbursed to the arbitrator.

(b) Attorney Jonathan L. Alpert: $2,000.00 daily for each hearing day, prorated based on a day's labor of seven (7) hours ($285.72

per hour), starting on the first hearing.

Attorney Alpert must be compensated for all the time he has incurred in preparation for the hearing at a cost of $2,000.00 daily, prorated based on a day's labor of seven (7) hours. All the expenses related with the procedure will also be reimbursed to the arbiter.

(c) Attorney John Lewis Chalif: $1,000.00 daily for each hearing day, prorated based on a day's labor of seven (7) hours ($142.86 per hour), starting on the first hearing.

Attorney Lewis must be compensated for all the time he has incurred in preparation for the hearing at a cost of $1,000.00 daily, prorated based on a day's labor of seven (7) hours. All the expenses related with the procedure will also be reimbursed to the arbiter.

16. For the submittal of claims before the arbitration panel, their rates exist based on the quantity of the claim. When adding the rate of the "Initial Filing Fee" and rate for follow-up ("Case Service Fee"), the total rate to be paid ("Total Rate") is itemized as follows:

| For a claim of | Total Rate |
|---|---|
| $0 up to $10,000 | $500 |

$10,000 up to $75,000
$750
$75,000 up to $150,000
$2,000
$150,000 up to $300,000
$3,750
$300,000 up to $500,000
$5,500
$500,000 up to $1,000,000
$8,000
$1,000,000 up to $7,000,000
$11,000
$7,000,000 up to $10,000,000
$16,000
Over $10,000,000
It is necessary to

contact the AAA.

17. The AAA, also, demands payment of court fees that may include the following: (a) deposits prior to the hearings to cover ordinary costs of the litigation, that may include arbiters fees, case service fees as requested by the arbitration court, including its experts, the fees for the administrator, a reasonable amount in attorney's fees for the party that is successful and any other cost incurred by

granting a provisional or emergency remedy, and (b) supplementary deposits by the parties.

18. To this date, the American Arbitration Association has requested the CRIM, the amount of $78,700.00.

19. The Legislator, knowing that the organic law of the CRIM has a reduced fixed budget for operational expenses, namely, 5% of the collections of property income tax according to Article 22, Law 80 of August 30, 1991, which determined that the CRIM would be exempt from paying taxes for filing legal proceedings. Article 19 of Law 80, 21 L.P.R.A. sec. 5818. It would be a violation to the bill and to the spirit of the organic law of the CRIM, to validate arbitration covenants that force the CRIM to pay exorbitant sums in litigating issues that concern it. The limited budget of the CRIM should be invested in land appraisals, collections, inspectors,

collection agents, service personnel, accountants and all the necessary personnel that is needed to collect the monies that by law, belongs to the 78 municipalities of our Island.

Besides all of the above, we continue to demonstrate that the preliminary injunction requested by the CRIM has all the necessary criteria for the same. Therefore, this Honorable Court must accept the request of the CRIM, to halt the arbitration that is being held in New York and proceed with the decision of the parties before the court, and according the right in effect, must be disclosed, before this Honorable Court. Behold.

## II. CRITERIA FOR ISSUING A PRELIMINARY INJUNCTION

The Code for Civil Procedures, 32 L.P.R.A. sec. 3523, in its' subsection 1, specifies:

> An injunction can be granted on the following cases:
>
> (1) when resulting from the petition that the petitioner has right to the requested remedy, and said remedy, or part of the same, consists in preventing the mandate or continuation of the denounced act, either for a limited period of time, or perpetually.

According to Rule No. 57 of Civil Proceedings and its interpretative jurisprudence, the criteria that must be considered at time of granting an injunction are: (1) the nature of the damages that may be done to the parties if the injunction is granted or denied; (2) it's irreparability or the existence of an adequate remedy in law; (3) the possibility that the plaintiff eventually prevails when the lawsuit is solved by trial; (4) the possibility that the case becomes

academic if the injunction is not awarded, and most of all, (5) the possible impression over the public interest of the requested remedy. Puerto Rico Telephone Company v. Tribunal Superior, 103 D.P.R. 200, 202 (1975); Municipio de Ponce v. Rosselló González, 136 D.P.R. 776 (1994). The primary purpose of the preliminary injunction hereby requested is to keep the status quo until the Honorable Court decides if the contract that holds the arbitration clause, in the same fashion as the defendant corporations have submitted their arbitration request in the City of New York, is null *ab initio*. Only with the submittance of the preliminary injunction, halting the arbitration, with the conduct of the defendant corporations prevent them from submitting and continuing with the arbitration, make ineffective the decision, that by law, must be done by this Honorable Court regarding

the nullity of the "Agreement". Cf., Cobos Licia v. De Jean, 124 D.P.R. 896 (1989).

## III. REASONING

A. The nature of the damages that the parties may sustain.

1. If this Honorable Court does not stop the arbitration through the injunction hereby requested, the CRIM will be forced to continue it's defense in said arbitration procedure. It has been decided that the arguments over the existence of the contract that includes an arbitration clause are decisions of the courts and not of the arbitrators. Three Valleys Municipal Water District v. E.F. Hutton and Co., 925 F. 2d 1136 (9no. Cr. 1991), synthesizes the doctrine to that effect as follows:

> If the dispute is within the scope of an arbitration agreement, an arbitrator may properly decide whether a contract is

> "voidable" because the parties have agreed to arbitrate the dispute. But, because and "arbitrator's" jurisdiction is rooted in the agreement of the parties (quotes omitted), a party who contests the making of a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of the existence of an agreement to arbitrate. Only a court can make that decision. (Our underlining.)

As can be obviously seen from the quote, there is a distinction between null and voidable, and it has been determined, that if the argument involves a null contract or nonexistent, it can only be solved through the courts.

In Puerto Rico, the Federal District Court has applied with consent the Three Valleys, supra decision. In Rivera v. Clark Melvin Securities Corp., 59 F. Supp. 2d 297 (DCPR 1999). Mentioned court

determined in a case in which the same existence of an arbitration clause and of a contract was argued, must be seen in the courts. Id., page 304.

Judge Pieras refers to other Federal Circuit Courts that have applied the Three Valleys, supra doctrine. In doing so, he refers to:

> Several courts have held that when a party contests the making of a contract containing an arbitration provision, the party cannot be compelled to arbitrate the "threshold issue" of the existence of an arbitration agreement but rather, the Court must determine the existence of the agreement to arbitrate. *Three Valleys Municipal Water District*, 925 F. 2d 1136, 1141-42 (9th Cr. 1991); see *Aircraft Braking Systems Corp.*, v. Local 856, Int'l. Union, 97 F. 3d

155, (6th Cir. 1996) (question of whether a valid agreement to arbitrate exists at all is answered by the courts); *Magallanes Investment Inc.*, v. Circuit Systems, Inc., 994 F. 2d 1214, 1217 (7th Cir. 1993) ("the existence of a contract to arbitrate (**22) is usually a threshold question for the court not the arbitrator to decide"); *Chastain v. Robinson-Humphrey Co.*, Inc., 957 F. 2d 851, 854 (11th Cir. 1992) ("if the validity of the agreement to arbitrate is in issue, a district court, not a panel of arbitrators, must decide if the arbitration clause is enforceable against the parties"); see also *MCI Telecommunications Corp.* v. Matrix Communications Corp., 135 F. 3d 27, 32 (1st Cir. 1998) (citing Three Valleys with

> approval and stating "fraud in inducing acceptance of the arbitration clause unquestionably would negate the contractual agreement on that issue). Id.

Evidently, a considerable number of courts, including the Federal District Court for the District of Puerto Rico, have determined that if nullity *ab initio* is alleged, the court has to resolve the motion. This is the most logical decision, since the whole contract is inexistent, the arbitration clause within the contract is also inexistent, and the arbitrator lacks jurisdiction.

Since the CRIM claims that the "Agreement" between the CRIM and the Consortium lacks cause and consent and is contrary to the law, the morals and the public order, this "Agreement" is nonexistent and the arbitration clause of section 22 of the

agreement is also nonexistent. The American Arbitration Association lacks jurisdiction to see this case and the same must be held before the Honorable Court of Puerto Rico.

To submit and litigate in New York the arbitration initiated by the Consortium, constitutes, by itself an irreparable damage to the CRIM. Several courts have so decided. It is an irreparable harm *per se*.

In Paine Webber, Inc. v. Hartmann, 921 F. 2d 507 (3rd Cir. 1990), the Circuit Court explained that before a party is brought to arbitration, the court must decide if the dispute is submissible to arbitration; that is, if a valid arbitration agreement exists and that the argument between the parties are included in referred arbitration agreement. Paine Webber, Inc., supra, to page 511, quoting AT&T Technologies v. Communications Workers of

America, 475 U.S. 643, 648, 89 L. Ed, 2d 648 (1986). If a controversy is or not subject to arbitration, that is for the Court to decide. Id. The Third Circuit Court indicates that, in light of said doctrine, "...we think that it is obvious that the damage to a party must be irreparable *per se* if a court were to abdicate its' responsibility of deciding the jurisdiction of the arbitrator, and in its place, force one of the parties, that has not agreed to, to submit to the determination of the arbitrator its' own authority (the arbitrators' one) to decide if the controversy is or not subject to arbitration. Id., to page 515, our own translation. Other courts have also decided, as with Paine Webber, Inc., supra, that to force a party that is not subject to arbitration, to arbitrate, constitutes irreparable harm. See, Prudential Securities, Inc., v. Mills, 944 F. Supp. 625 (W.D. Tenn. 1996); Gruntal &

Co., Inc., v. Steinberg, 837 F. Supp. 85, 92-93 (D. N.J. 1993).

2. Also, the primary responsibility of the CRIM is "to collect, receive and distribute public funds" that belong to the municipalities. 21 L.P.R.A. sec. 5802. In Centro de Recaudación de Ingresos Municipales v. Federación Central de Trabajadores, 142 D.P.R. (1997), the Puerto Rico Supreme Court decided that the CRIM, "holds a duty that traditionally belongs to the State, which is everything that has to do with income tax collections". Id., to page 975. The Court concluded that "...due to a very high degree of public ends, as well as due to its' high degree of budgeting dependency, the CRIM, as an institution, is more like a typical government agency". Id., to page 977. By definition, we are therefore, before a government that worked with public funds.

3. The costs of the LIMS project financing during fiscal years 996-97, 1997-98 and 1998-99 were distributed among all the municipalities according to the table included in exhibits 12, 13 and 14 of the Lawsuit. The costs of financing the LIMS project change by municipality. Lets make it clear, also that the 78 municipalities of Puerto Rico and the CRIM have been harmed by the illegal discounts that have been made for paying the LIMS project. The quality and quantity of the municipal services are harmed if the resources of the municipality are harmed. Cf, Municipio de Ponce v. Roselló González, 94 J.T.S. 112. The magnitude of the damages will be appreciated when studying the arguments presented when illustrating this Honorable Court that the CRIM will suffer irreparable harm if the injunction is not granted.

4. Furthermore, to finance the LIMS project, on October 17, 1996, the CRIM, also through Mr. Burgos, subscribed a credit agreement, through which a banking entity by the name of Chicorp Financial Services, Inc. ("Chicorp") loaned the CRIM $56,000.000.00 for financing the LIMS project.

5. CRIM, through his former director Eduardo Burgos Negrón, subscribed a promissory note in the amount of $56 million dollars. (See Exhibit 1, enclosure).

6. As can be seen from the same, the CRIM promised to make 14 payments of $5,102,195 for the payment of principal and interests, which it has continued to do so according to the terms of the promissory note.

7. The obligation to pay mentioned loan by the CRIM, shows the magnitude of the damages

made to the municipalities and to the CRIM, due to the nullity of the contract of the LIMS project.

8. The economic harm that this agency has suffered and can suffer has a direct effect over each municipality and therefore over each and everyone of the citizens of the Commonwealth of Puerto Rico.

9. Finally, the exorbitant cost of arbitration cannot be nor should it be paid with the limited public funds that the CRIM has. As we demonstrated, there is no legal reason for the Court to stop the arbitration, since the nullity of the contracts with arbitration clauses is an issue to be decided by the courts and not by the arbitrators. Three Valleys Municipal Water District v. E.F. Hutton and Co., 925 F. 2d 1136 (9no. Cir. 1991).

10. We have seen how the CRIM has suffered serious damages as a consequence of the fraud related to the contract object of arbitration

between the CRIM and the defending corporations. These damages are not only financial, but also harm the reputation and good name of the CRIM.

11. To permit the continuation of the arbitration proceedings before the AAA, would have the consequence of continuing to decrease the funds of the CRIM, funds which have already been severely harmed by the behavior of the defendants.

12. The performance of a property income tax collection agency, such as the CRIM, depends largely on the good faith and trust that taxpayers can have in its government and their instrumentalities.

13. The fraud committed by Mr. Burgos, the defending corporations through its' principals and others have been subject to a major display in the newspapers, generating mistrust in the good

performance of the CRIM and the administration of its collections.

B. Irreparable Harm or the Existence of an Adequate Legal Remedy

To force the CRIM to arbitrate non-submissible to arbitration controversies, such as the nullity of the contract, is an irreparable harm *per se*. (See, Paine Webber, Inc., supra; Prudential Securities, Inc., supra; Gruntal & Co., Inc., supra.

In the case Municipio de Ponce v. Roseelló, supra, the Municipality requested to specifically comply with some agreements with the central government and requested a preliminary injunction ordering the deposit in the court of the funds that were agreed to in the contracts. The central government opposed the requested injunction arguing that the Ponce Municipality alleged

monetary damages and as such this request did not constitute irreparable harm.

The court in this case decides to grant the injunction and quotes with authority David Rive Rivera in Extraordinary Petitions, where the arguments are:

> The mere fact that, that which is in controversy is a monetary claim does not definitely exclude the remedial injunction if it is necessary to keep the status quo and to prevent that from the mere elapsing of time the plaintiff remains without an effective remedy, as well as to protect a proprietary right threatened by an imminent illegal act of the defendant. Municipio de Ponce v. Rosselló, supra, to page 787.

The CRIM lacks another legal resource to prevent imminent damages to which it is exposed if the arbitration procedure is continued in a

jurisdiction other than Puerto Rico. It is in Puerto Rico were the facts occurred, the witnesses are, the documents and the people know about the issue. The majority of the documents are in the Spanish language, therefore they would have to be translated for the arbitrators who do not know this language and which would be the ones to decide the controversies that the contract presents in the LIMS project. The preliminary injunction is the only resource to try to prevent the immediate and irreparable harm to the plaintiff.

C. Probability of the Plaintiff to Prevail when the Lawsuit is Resolved By Trial

Article 4 of Civil Code, 31 L.P.R.A. sec. 4 determines that: "Acts done contrary to what the law determines are null, except for the cases in which the same law orders its validity". The word "null" in this article has the range of null *per se*, of

inexistent. Corporación Azucarera v. Junta Azucarera, 77 D.P.R. 397, 409 (1954). When Puerto Rico was organized, the contracts without cause did not exist or when the cause is illicit. Sánchez Rodríguez v. López Jiménez, 116 D.P.R. 172, 181 (1985). The guilty plea for violations to articles 1951 and 1956 of Title 18 of the United States Code of Mr. Burgos and Mr. Habibe make evident the illicitness of the "Agreement" cause with the Consortium. United States v. Burgos Lebrón, supra.

Article 1213 of the Civil Code, 31 L.P.R.A. sec. 3391 determines that: "There is no contract except when the following requirements are met: (1) Agreement between contracting parties. (2) Contract matter subject to truth. (3) Cause of obligation be established". In other words, if these three elements do not concur in completing a contract, the same is nonexistent.

It is so explained by Manresa in his Comments to the Spanish Civil Code:

> Even when article 1.261 of Code (1213 ours), by its' own generalities, seems to have no other end except for enumeration, subject matter is so fundamental and the precept so energetic, that an important consequence can be derived from it that when one of the three requirements is missing there is not only a merely null contract but also sensitive to confirmation, but something else happens, that is the legal interrelation is absolutely missing and there is no contract, as the legal text says (emphasis in the original). José Manresa, Comments to the Spanish Civil Code, Book VIII, Vol.

2, 476 (6th ed. 1967), our own underlining.

Manresa also quotes a case from the Supreme Court of Spain (S. March 12, 1952) in which the following is exposed:

> When alleging the motion that the contracts are valid by concurring the essential requirements claimed by article 1.261 (our 1213) and concurring with the Civil Code, the matter is assumed, forgetting the petitioner that the legal interrelation arises from the real concurrence of the consent, object and cause, but not from the simple concurrence seeming from the consent and from an illicit cause in its' terminating sense or of an impulsive drive and determining of the agreement, reasons to overrule

> the motion (provided emphasis). Id.

The agreement between the CRIM and the Consortium lacks the same missing needed elements in a contract as referred to in the preceding quote. This "Agreement" has an apparent simple concurrence of consent motivated by an illicit cause. Mr. Burgos was not authorized to consent, on behalf of the CRIM, to a transaction contrary to law and to the public order and motivated by the need of obtaining personal profits. His actions also constitute violations to the Penal Code of Puerto Rico and to the Government Ethics Law that protected him as a public officer.

The Supreme Court of Puerto Rico has been extremely consistent in declaring null the obligations contracted in violation of the law. Fernández & Gutiérrez, Inc. V. Municipio de San Juan, 99 JTS 31;

Hatton v. Municipio de Ponce, 134 D.P.R 1001 (1994); Venancio Morales v. Municipio de Toa Baja, 119 D.P.R. 682 (1987). The Court in the case of Venancio Morales, supra, determined that the actions of a municipality in violation of the law were null and *ultra vires*, therefore they could not have an effect in favor of the defending contractor. Venancio Morales, *supra*, page 691. The Court bases its opinion with respect to the nullity of the contracts against the law and the public order in article 4 of the Civil Code of Puerto Rico. Id., page 685. Also, the Court bases its' decision in Article 1207 of the Civil Code, 31 L.P.R.A. sec. 3372, that determines that "the contracting parties can establish pacts, clauses and conditions that may be convenient, as long as they are not against the laws, the morals, nor the public order".

In the case De Jesús González vs. Autoridad de Carreteras, 99 JTS 72, the Supreme Court determined, based in article 1207 of the Civil Code, 31 L.P.R.A. sec. 3372, that any contract contrary to law, to the morals and to the public order is null and nonexistent: "independently of the type of contract and of the importance that this has for the contracting parties, it is null and therefore, inexistent, a contract that results contrary to laws, to the morals or to the public order". De Jesús González, *supra*, to page 994.

Regarding the contracts in which the Commonwealth of Puerto Rico is one of the parties, the Court on De Jesús González expresses itself the following way:

> When the contracting involves the use of goods or public funds, we also insist, in the rigorous enforcement of all the pertinent regulations to the

> contracting and disbursement of these funds, to the effects of protecting the interests and monies of the people. We have emphasized that the cautious handling of public funds is saturated with public order interests. We have emphasized regulatorily the imperious need to prevent the squandering, the extravagance, the favoritism and the prevarication in governmental contracts (omitted quotes). Id., to page 996.

As previously mentioned, the CRIM is an entity created to collect, receive and distribute public funds. Article 3 of Law No. 80 of August 30, 1991, 21 L.P.R.A. sec. 5802. Its performance cannot be contrary to law or to the public order, since this order is what the agency tried to protect and encourage. The actions of the executive director of the CRIM in violation of the law, the morals and the public order, as well as the actions of a mayor in violation of the

Municipal Law in Venancio Morales, are null and *ultra vires*, due to the arguments exposed in the quoted preceding cases.

Article 10 of the CRIM law determines pertaining to that: "The officers and employees of the Center will be subject to secs. 1801 et seq. of Title 3, known as 'Governmental Ethics Law of the Commonwealth of Puerto Rico'". Art. 10 of Law No. 80 of August 30, 1991, 21 L.P.R.A. sec. 5809. The Governmental Ethics Law expressly prohibits the type of conduct incurred by Mr. Burgos in relation to the agreement with the Consortium. See arts. 3.2 thru 3.4 of Law No. 12 of July 24, 1985, 3 L.P.R.A. secs. 1822-1824, as amended. Lastly, the Rules for Bids of the CRIM specifies that the officers and employees that intervene with bids and purchasing activities cannot accept gifts from firms or individuals that provide services nor can they have

economic interests in the procedures of bids and awards. Mr. Burgos accepted the violation to these articles of the Regulations. (See Exhibit 2, pages 32-36.)

Furthermore, the CRIMs' Organic Law, Law 80 of August, 1991, supra, forces the CRIM to collect, receive and distribute public funds belonging to the municipalities, deriving from the basic income tax contribution and the additional income tax contribution imposed over all personal and real estate property of Puerto Rico. See 21 L.P.R.A. § 5002 and 5815.

The funds deriving from mentioned property income tax contributions must be deposited in a trust with the Government Development Bank and distributed according to the established procedures in articles 16 thru 18 of Law 80, *supra*, 21 L.P.R.A. § 5815-5817.

The authorized disbursements by law against such municipal funds in account of property income tax contributions, are made according to an established order of priority established in article 17 of Law 80, supra, 21 L.P.R.A. § 5816. The disbursements that the CRIM can make to take care of its' performance and operational expenses are the fourth priority according to mentioned law.

In relation to the administration of operational funds of the CRIM, article 22 of mentioned Law 80, *supra*, specifically establishes whatever is related to the funds that will be assigned to the organization and performance of the CRIM, who is authorized to annually set aside an amount on account of operational expenses, up to a maximum of 5% of the total annual collections on account of property income tax contributions of the preceding fiscal year. Article 22, Law 80.

The Law does not authorize the CRIM to deduct an additional amount, from the income of the municipalities, to cover the cost of financing the LIMS project, that has the effect of exceeding the 5% specifically established by article 22, *supra*, as the maximum amount to be retained for operational expenses and performance of mentioned entity.

During fiscal years 1996-97, 997-98, 1998-99 and 1999-2000, without any legal authority and exceeding the established limitations by law regarding the authority to retain monies from the income of the municipalities, the CRIM, under the direction and induced by Mr. Burgos, retained mentioned public funds belonging to the municipalities, an additional deduction identified as "Expenses for LIMS Operations".

In addition, for its' operational expenses, CRIM retained of the collected funds, $16,815,642.00

in fiscal year 1996-97; $18,731,419.00 in fiscal year 1997-98; $18,679,341.00 in fiscal year 1998-99 and $18,679,341.00 in fiscal year 1999-2000.

The result of the deductions made by the CRIM for the LIMS project together with the deductions for its' operational expenses, was that for fiscal years 1996-97, 1997-98, 1998-99 and 1999-2000, without legal authority, the CRIM retained 6.83%, 8.57%, 7.46% and 8.09%, respectively, of the total property income tax collected.

Therefore the actions made by Mr. Burgos related to the agreement between the CRIM and the defending corporations violated the CRIMs' law and are null and *ultra vires*. Burgos lacked the authority to act as he did and the CRIM lacked the authority by law to consent or approve these actions.

Due to these arguments the contract or agreement between the CRIM and the defending

corporations are null and inexistent due to lack of consent and cause and for being contrary to law, the CRIMs' regulations, the morals and the public order. In being this contract nonexistent, the arbitration clause that is included in section 22 of the agreement is also nonexistent. Therefore, the arbitration between the CRIM and the defending corporations do not proceed and the same must be halted through the injunction herewith requested.

Finally, the arbitration clause of section 22 of the contract between the CRIM and the defending corporations clearly establishes that the arbitration between the parties is to be held in Puerto Rico. The arbitration procedures determined by the AAA in its' scheduling order, ("Scheduling Order", infra) will be held from New York, with arbitrators living in the Continental United States. Only the planned hearing of December 4, 2001 will be held in Puerto

Rico. This goes against the alleged agreed arbitration.

The alleged arbitration agreement specifies that the Puerto Rico law will be applied. The named arbitrators, although attorneys, are not experts in puertorrican laws, laws with which will they be obliged to use relating to this controversy. This clear infringement to the arbitration clause, we respectfully understand, proves that the arbitration initiated by the Consortium not only violates the alleged arbitration agreement, but it also violates the doctrine that states the validity that must be granted to the arbitration clauses, that the court selected; with some exceptions, among which the present case is not. See, Unisys P.R., Inc., v. Ramallo Brothers, Inc., 128 D.P.R. 842.

D. Probability that the Cause Becomes Academic if the Injunction is not Granted

On May 21, 2001 the CRIM appeared before the arbitration through its' new legal representation. In mentioned occasion, the arbitrators were explained the new CRIM administration was in the process of evaluating if, the contract object of arbitration, was obtained through fraud of the preceding CRIM officers in conspiracy with the officers of ENTEC, CEPI and HLRA. The arbitrators were explained that the former executive director of the CRIM pleaded guilty to 3 federal charges for which he was indicted. The arbitrators were notified the pleas of Mr. Burgos when pleading guilty. A request for halting the procedure for 45 days was made. This was overruled.

When overruling the halting of said procedures for only 45 days, the arbitration panel

confirmed the scheduled order of the proceeding as follows:

July 13, 2001 – Last day to amend allegations.

July 23, 2001 – Last day to answer the amended allegations.

October 1, 2001 – End of discovery of facts.

October 15, 2001 – Deadline to furnish the arbitration panel a document in which the parties agree to the legal facts and controversies to be solved in arbitration.

November 1, 2001 – the parties must exchange the witnesses, experts and reports lists. Also, the parties must exchange sworn testimonies from those who will only testify in this manner and the numbered exhibits.

November 9, 2001 – Exchange briefs prior to the hearing, witnesses list as well as experts' rebuttals, with the reports of the experts.

November 9, 2001 – Deadline to present motions.

November 16, 2001 – Last day for additional discovery of facts of the experts.

November 19, 2001 – Last day to answer motions.

December 4, 2001 – Arbitration hearing in Puerto Rico.

In a subsequent telephone conference with the arbitration panel, to which the CRIM has especially appeared in court and without submitting to the jurisdiction of the panel, the CRIM has reinforced its' request for halting and/or overruling of the arbitration procedures due to the obvious nullity of

the arbitration agreement, for the reasons outlined in this motion and in the injunction lawsuit. The panel has reaffirmed its' position that it will not halt the arbitration procedures until an order to that effect has been issued from this Honorable Court.

The refusal of this Honorable Court in granting this motion would create the possibility of inconsistent judgment if the arbitration keeps its due course. An unfavorable decision to the CRIM taken by the arbitration panel of the AAA and the payment of the award could turn into an academic one the controversy presented before this Honorable Court, since the efforts would be undermined if this Honorable Court declares null the "Agreement" between the Consortium and the CRIM if the arbitration keeps its' due course, concluded on December 4, 2001, and the CRIM would be obliged to anything under the null contract.

E. Possible Impact On the Public Interest

With regards' to the public interest involved in the contracting with the State, the case of De Jesus González, supra, disposes the following:

> When interpreting the contemporaneous sense of the Civil Codes' disposition which requires that the contracts are not contrary to the public order, we cannot ignore that when contracting by the State, *the healthy and correct administration of the funds of the country is clad with the highest public interest*, and all governmental organisms are obliged to thoroughly oversee the essence of the consecrated principle in section 9 of Article VI of the Constitution of the

> Commonwealth of Puerto Rico that the public funds can only be spent in legitimate public ends (our emphasis). De Jesús González, supra, to page 997.

The refusal to award this motion will lead to the CRIMs' continuation of investing time and efforts and even more public resources in defending itself in a costly arbitration that ensues from a null contract that has drained the CRIM and the municipalities from valuable economic resources that should be invested in more and better profits for all the citizens of Puerto Rico. Due to this, granting the present preliminary injunction is in the best interest of justice and of a good public policy.

## IV. BAIL

Rule 57.3 of Civil Procedures, 32 L.P.R.A. Ap. III R57.3 disposes, in its pertinency, that: mentioned

bail will not be requested to the Commonwealth of Puerto Rico, its' municipalities, agencies or instrumentalities nor to any one of its' officers in its official character". The CRIMs' organic law disposes that it is exempt from the payment of rights and schedule of fees for judicial procedures. 21 L.P.R.A. sec. 5818.

The CRIM complies with this requirements, therefore imposing bail does not proceed if the requested preliminary injunction is issued.

HEREBY, its is very respectfully requested of this Honorable Court, to designate a hearing of the current request for preliminary injunction and after the hearing issue an order to cease the arbitration procedure initiated before the AAA by the defendants' until this controversy has been decided by its merits by this Honorable Court.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on September 26, 2001.

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**COMMONWEALTH OF PUERTO RICO**
**FIRST INSTANCE COURT**
**SUPERIOUR COURT OF SAN JUAN PART**

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| CENTRO DE RECAUDACIONES DE IMPUESTOS MUNICIPALES<br><br>Plaintiff<br><br>v.<br><br>ENTEC CORPORATION, ET ALS.<br><br>Defendants | CIVIL NO.: KPE-01-2012(907)<br><br>RE:<br><br>DECLARATORY JUDGMENT, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, NULLITY OF CONTRACT, LAW AGAINST ORGANIZED CRIME, DAMAGES |

**MEMORANDUM OPPOSING INJUNCTION REQUEST AND MOTION TO ORDER THE CRIM TO PROCEED WITH ARBITRATION**

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**COMMONWEALTH OF PUERTO RICO**
**FIRST INSTANCE COURT**
**SUPERIOUR COURT OF SAN JUAN PART**

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**MEMORANDUM OPPOSING INJUNCTION REQUEST AND MOTION TO ORDER THE CRIM TO PROCEED WITH ARBITRATION**

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1. First Part – Under the Arbitration Law of Puerto Rico and the applicable 8
jurisprudence under the Federal Arbitration Act, the requested injunction
by the CRIM, does not proceed.

A. The Puerto Rico Arbitration Law is the correct legal frame under 8
which the request of the CRIM must be granted.

1.The Arbitration Law specifically disposes what should a party 10
do to contest or validate an arbitration agreement.

2.The arbitration clauses are divisible as an issue of fact; once 10
the existence and validity of a contract per se has been determined, to impeach
the whole contract must be referred to the arbitrators.

3.The severability of an arbitration clause
subsists, without taking into account

the theory that is used to challenge the contract that includes it.

13

4. All the allegations of the CRIM, in its lawsuit as well as in the 14 request for a preliminary injunction are addressed to impeach the contract as a whole, they do not contest independently the validity of the arbitration clause, per se.

5. The federal cases that the CRIM quotes, are not inconsistent 15 with the severability rules of the arbitration clauses. But even if they were, they give way to the ground rules of the Federal First Circuit.

6. The arbitration clause object of this case, covers the nullity 17 allegations of the contract.

B. The CRIM submitted to arbitration and is refrained from provoking a controversy over the existence or validity of an arbitration agreement. 19

1. Under the Arbitration Law, the CRIM is refrained by its' own 19 acts to challenge the existence or validity of the arbitration contract.

2. The CRIM subjected itself to the arbitration process and cannot 20
question now the jurisdiction of the chosen arbitrators.

II. Part Two – In the alternative, the injunction request does not proceed because the needed rules are not met.
22

A. The requested rules for granting an injunction are not present in this case.

22

1. Complying with a contractual agreement does not constitute 22
irreparable harm.

2. The rest of the alleged damages would not result from the 23
refusal of an injunction request, since allegedly they already happened.

3. The other damages that the CRIM describes as irreparable 24
simply do not exist.

4. The arbitration procedure is being held according to the 25
arbitration agreement.

5. Entec has demonstrated the impossibility of the CRIM to 25
eventually prevail by its' merits.

a) It is not possible for the CRIM to prevail in its argument that 25
the nullity of the contract automatically invalidates the obligation to arbitrate.

b) In its' alternative, the CRIM has not demonstrated either that 26
it will prevail with its' argument that the contract has to be annulled.

(i) The guilty pleas quoted by the CRIM, are not 26
conclusive evidence of the facts.

(ii) Neither are admissible against those appearing in court 28
any statement made by Mr. Nelson Soto.

(iii) The statement that Messrs. Habibe were not victims 29
of fraudulent acts of the CRIM's officers, is wrong and hypothetical.

(iv) The contract for the LIMS project is entirely consistent 30
with the Organic Law of the CRIM.

(v) The LIMS project does not constitute an operational 34
expense.

B.There is no probability of the cause becoming academic if the 35
injunction is not awarded.

C.The public interest will benefit from the validation of the arbitration clause. 36

Conclusion 37

**COMMONWEALTH OF PUERTO RICO**
**FIRST INSTANCE COURT –**
**SUPERIOUR COURT OF SAN JUAN PART**

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| CENTRO DE RECAUDACIONES DE IMPUESTOS MUNICIPALES<br><br>Plaintiff<br><br>v.<br><br>ENTEC CORPORATION, ET ALS.<br><br>Defendants | CIVIL NO.: KPE-01-2012(505)<br><br>RE:<br><br>DECLARATORY JUDGMENT, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, NULLITY OF CONTRACT, LAW AGAINST ORGANIZED CRIME, DAMAGES |

**MEMORANDUM OPPOSING INJUNCTION REQUEST AND MOTION TO ORDER THE CRIM TO PROCEED WITH ARBITRATION**

TO THE HONORABLE COURT:

The co-defendant parties appear in Court, ENTEC CORPORATION and CONSULTA ECONOMICA Y PLANIFICACION, INC. (hereinafter collectively "ENTEC"), and they respectfully expose, allege and request:

## INTRODUCTION

The arbitration clause included in the contract for the LIMS project was originally proposed by the Centro de Recaudación de Ingresos Municipales ("CRIM") to ENTEC in the contract model included in the pages of the bid handed over to all bidders. ENTEC accepted the arbitration proposal, which was actively negotiated by the CRIM, but now the CRIM denies this agreement and pretends to halt the arbitration procedures after having actively participated in the process for more than six months.

The Arbitration Law of Puerto Rico, (Law No. 376 of May 8, 1951), 31 L.P.R.A. § 3171 and next few (the "Arbitration Law"), specifically rules the procedure to request an arbitration suspension. The Arbitration Law says how any controversy will be judged regarding the validity or existence of an arbitration contract.

Neither Rule 56 nor 57 of Civil Proceedings constitute the adequate legal vehicle to determine if halting the arbitration procedures that the Centro de Recaudación de Impuestos Municipales (CRIM) has requested proceeds. Evenmore so when the requested cease lays over the general impeachment of a contract that contains an arbitration disposition, and not over the illicitness or inexistence of the arbitration clause, per se. Not one of the 53 pages of the CRIMs' writings mentions the Arbitration Law, and it is easy to infer why. The CRIM knows that

under the specialized analysis that the Arbitration Law demands, the arbitration disposition can be judged independently, as a matter of threshold, to first determine what court---if contractual or judicial—should award an assault to the nullity of the contract in general.

Since the CRIM has not provoked any controversy regarding the validity of the arbitration clause per se, every nullity argument that can be made against the contract in its general form must be referred to the arbitrators, as agreed by the parties.

Under the Arbitration Law, it unavoidably falls upon this Honorable Court to determine a priori if a controversy exists independently from the validity of the arbitration agreement per se. But once it determines that there is no controversy over the arbitration agreement in itself, it must refer to

the arbitration court any controversy that was agreed to arbitrate, including the allegations that the CRIM has over the nullity of the contract in general terms.

The need to analyze the arbitration clause as one separate and independent of the contested contract was awarded very accurately, in the Judgment of January 23, 2002 of the Circuit Court of Appeals in this case:

> In the cause that concerns us and as previously indicated, the parties established in the arbitration contract that the controversies, arguments and questions that may arise between the parties and that cannot be solved satisfactorily, must be resolved through the alternate method of arbitration in Puerto Rico and according to our laws.

> Although we revoke the appellate judgment and we return the cause so that the Instance Court holds an evidence hearing and determines if the concession of the preliminary injunction requested proceeds or not, it is inevitable that to that effect, mentioned court interprets if the intention of the parts when agreeing to arbitration also included, awarding any controversy that would arise regarding the legality and validity of the contract object of the legal action.

Judgment, pages 40-41.

Even if the injunction, were the appropriate remedy, this Court must determine first if the arbitration clause allows that the arbitration panel grants also the controversy regarding the nullity of the contract. If this is so, the injunction must be

denied and refer the issue to arbitration. Obviously, this adjudication calls for the validity and breadth of the arbitration determination to be judged as the first and independent issue of the contract per se, since in another way the guidelines of the Circuit Court could not be met..

In the first part of this writing, ENTEC will establish that the Arbitration Law controls any request for halting an arbitration and that, even when the Court would decide to accept the wrongly named "injunction request" from the CRIM as a late motion under the Arbitration Law, the CRIM has not brought about any controversy regarding the validity of the arbitration clause. Therefore, any argument regarding the alleged nullity of the contract must be referred to the arbitrators.

ENTEC will also demonstrate that the CRIM not only proposed and negotiated the arbitration

clause that now charges at, but that it also submitted voluntarily and actively to the arbitration and agreed on not following through, for more than a year, the fixed period of time that it had to present the "motion to cease arbitration" that the Arbitration Law requests. It is now precluded from disputing the validity or existence of the arbitration agreement.

This analysis under the Arbitration Law would resolve the controversy, turning into academic the out of focus dissertation of the CRIM under the wrong concept of injunction. The evidence hearing that the Circuit Court ordered would be unnecessary due to the fact that the CRIM has not challenged the arbitration clause per se, that is, independently of the contract that includes it --- and has not made an evidence offer, nor any allegations that the arbitration agreement, properly said, is illegal. The CRIM has not either filed evidence that the

controversy regarding the total nullity of the contract is out of the arbitration clause scope.

In short, the Honorable Court would be in a position to order the CRIM that it must definitely submit to the arbitration that it agreed to (and to which the CRIM submitted to participating actively without any objection for more than 6 months, before the tactical play of the "injunction") so that the arbitration panel can decide every controversy related to the LIMS project contract, including the alleged illegality and nullity of the contract alleged by the CRIM.

As an alternative, the second part of this document will be dedicated to demonstrate why, even when under an injunction analysis, the halting of arbitration does not proceed.

## ACCOUNT OF PERTINENT FACTS

1. On July 20, 1995, the CRIM and ENTEC, subscribed an agreement by which ENTEC would be in charge of designing, developing, installing and implementing a digitalized land registry system, known as "Land Information Management Systems" ("LIMS").

2. The cost of the performed work, meaning equipment, materials and services, would be $56,042,352.00; amount that the CRIM would pay along the completion of the different phases of the project. See Section 19.1 of the contract, Attachment A, page 15.

3. The CRIM presented the LIMS project to private banking in order to finance the same as a capital improvements project. The investment of $56,042.352 was eventually financed as a whole, through a private banking loan with The Chicago Corporation. Said entity was later acquired by ABN-

AMRO. Recently, mentioned loan was re-financed through the Government Development Bank and/or the local private banks. Statement of Tommy O. Habibe Vargas, ENTEC principal and Technical Director for the LIMS project, Attachment B.

The parties agreed that any argument or difference that would arise over the Agreement, that could not be solved by the parties, would be granted through arbitration before the American Arbitration Association ("AAA"). See, Attachment A. Section 22.2 of the contract, pages 19-20.

5. The arbitration clause included in the LIMS project contract, was originally proposed by the CRIM in the contract model included in the pages of the bid as delivered to all bidders. Afterwards, the same was modified by the CRIM during negotiations addressed to the signature of the contract. Attachment B, Statement of Habibe, paragraph 24.

6. Prior to granting the contract, approximately on November 15, 1994, Mr. Tommy Habibe Vargas traveled to Washington, D.C., by the request of Mr. Nelson Soto Velázquez, President of CEPI, in the company of Mr. Carlos Guilbe, Technical Advisor to CEPI, to make a presentation to Mrs. Margarita Sanfeliz Wu, over the products and technical capabilities of ENTEC (and the company represented by ENTEC, INTERGRAPH), in order to meet the needs that the CRIM had for the mechanization of the land registry.

7. In the meeting with Mrs. Sanfeliz Wu, coordinated by Mr. Soto Velázquez, Mrs. Sanfeliz Wu questioned the experience and background of Mr. Habibe Vargas and ENTEC and INTERGRAPH to develop a land registry project. Statement of Habibe, paragraph 4.

8. The next day, that is, on November 16, 1994, Mr. Habibe Vargas made a presentation to Mrs. Sanfeliz Wu entitled "The Integrated City", prepared by INTERGRAPH, regarding the requirements and technical details of the geographic information systems, and, specifically, land registry. Sworn statement of Habibe, paragraph 5. As part of this presentation, Mr. Habibe furnished Mrs. Sanfeliz Wu several marketing brochures, prepared by INTERGRAPH, regarding products and technology for the mechanization of geographical information and land registry. Copy of that literature is enclosed as Attachments I and II to the Statement of Habibe, parag. 5, denominated Attachments C and D.

9. When the presentation concluded, Mrs. Sanfeliz Wu asked Mr. Habibe Vargas if they had information that would help her define the functional

requests for a land registry project such as the CRIMs'. Mr. Habibe Vargas mentioned that he had several documents that would facilitate understanding the functional requirements of a governmental land registry system. Statement of Habibe, par. 7.

10. At any time during the meetings held in Washington, D.C., nor after these, did Mrs. Sanfeliz Wu request money, nor was she paid for nor was she promised any manner of payment by ENTEC or their principals in exchange for her negotiations in facilitating the award of the contract for the LIMS project to ENTEC. Statement by Habibe, par. 10.

11. When returning from the trip, Mr. Habibe Vargas furnished Mr. Soto a copy of the INTERGRAPH documents that he had available to agree to Mrs. Sanfeliz Wus' request. Among the documents furnished, "Sample Local Government

GIS RFP" was handed in, prepared by INTEGRAPH for marketing purposes. Neither ENTEC nor Mr. Habibe participated in drawing up the document, which was distributed by INTERGRAPH as an educational instrument and general reference guide for the definition of functional requirements of geographical land information and registry systems. Mentioned document was previously distributed by Mr. Habibe to prospective clients in Puerto Rico and internationally, including technical personnel of the Cartography Department of the CRIM where Mr. Habibe had made several presentations during years 1993 and 1994 to persuade them about the benefits of the digitalization of the land registry. The only change made to referenced document before handing over to Mr. Soto, was of placing the CRIMs' logo in the front page and substituting in its contents the

word "**CUSTOMER**" by the word "**CRIM**". Statement of Mr. Habibe, pars. 11 and 12.

12. On January 11, 1995, ENTEC obtained the bid papers for the LIMS project published by the CRIM.

13. It was not until January 18, 1995, that Mr. Tommy Habibe sees Mrs. Sanfeliz Wu again, in the pre-bid mandatory meeting of the LIMS project, held in the CRIM.

14. On February 15, 1995, the bids were opened and ENTEC submitted its' proposal. The contract was awarded to ENTEC on July 20, 1995. Neither ENTEC nor any of its' principals paid money, received requests for payments or made payment promises to any one person in exchange for obtaining the project LIMS contract for ENTEC. Attachment B, Statement by Habibe, par. 16.

15. Once due, demand and settled for payment some of the payment due by the contract LIMS, on or about September 22, 1995 an officer related to the CRIM for the first time requested from Mr. Tommy Habibe Arias a payment on condition of receiving payments for invoices due by the CRIM to ENTEC. The payment of these monies and other subsequent payments were requested to Mr. Tommy Habibe Arias on condition of receiving payments on due invoices by the CRIM to ENTEC, for work performed and accepted under the LIMS contract Attachment B., Statement by Habibe, par. 17.

16. On August 8, 2000, indictments were presented on the Federal District Court for the District of Puerto Rico, against several employees and executives of the CRIM and of ENTEC, stemming from the extortion acts of officers of the

CRIM. On that same date, Federal Prosecutor Guillermo Gil exclaimed, at a press conference:

> The charges that appear here are extortion charges. Which means that the public officers claimed payment to contractors. It does not occur on the contrary, that the contractors go to the public officers. Its' the public officers--- "if you want me to pay you, you have to pay me first".[1]

17. On September 20, 2000, ENTEC was forced to submit a "Demand for Arbitration" before the AAA due to the failure of the CRIM to comply with its' obligations under the LIMS contract. The sum of $2,241,685.78 was requested for payment for performed services in accordance with the

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[1] The persons appearing in Court have a recording of said press conference, which they will submit to the Honorable Court at its' convenience.

Agreement; $1,626,186.16 for maintenance work performed and $6,699,578.00 for changes accepted to LIMS project specifications. The sum of $5,000,000.00 was also claimed for damages, including loss of income, loss of business opportunities and others.

18. On December 11, 2000, the CRIM appeared before the AAA and presented a "Statement of Defense" in which it denied all the allegations made by ENTEC but did not contest the validity of the arbitration clause nor the arbitrators jurisdiction, despite the fact that the federal indictments that allegedly invalidated the contract were already known.

19. The CRIM alleged by its merits, claiming that ENTEC did not comply with clause 18 of the Agreement, which determines the procedure to follow in carrying out improvements or change

orders. The CRIM upholds that the Consortium, by not complying with referred clause, had assumed the risk of the changes made since it knew that the same were approved. Furthermore, the CRIM upholds that the Consortium had illegally invoiced for maintenance charges during the fixed period of time of warranty for the equipment and therefore, they had unduly invoiced the amount of $161,697.60. The CRIM requested payment on referred to amount, as well as damages to an amount not less than $20,000,000.00, for arrears, loss of income, loss of business opportunities and for equipment and damaged or obsolete programming. Statement of Defense of the CRIM, Attachment C.

20. On February 28, 2001, the CRIM notified ENTEC in the First List of Interrogatories, Petition for Admissions and Submittance of

Documents, whose contents veered towards ENTECs' allegations in its' Arbitration Request.

21. Eight (8) months after submitting the Arbitration Request and six (6) months after submitting the Defense Declaration, the CRIM for the first time was not sure of the jurisdiction of the Commercial Arbitration Court of the AAA. In its' Court Appearance and Request for Ceasing Arbitration of May 21, 2001, the CRIM, through its' new legal representation, claimed that the CRIMs' new administration and its' new legal representation were evaluating the possibility that the agreement would sustain fraud. Referring to investigations held by the Office of the Federal Prosecutors' Office in Puerto Rico, the CRIM requested that the arbitration procedures cease to evaluate the strategy that they would undertake and possible allegations to its' amendments.

22. After a conference prior to the hearing through telephone conference held on June 8, 2000, The Commercial Arbitration Court refused to cease the arbitration procedure and established an itinerary for the case and arranged the terms for the pending works.

23. On July 13, 2001, the CRIM amended its' answer to the "Amended Response to Demand for Arbitration", in which it alleged that the agreement was null ab initio since it was subscribed by fraud. Under that premise, it alleged that the procedure had to cease because the AAA lacked jurisdiction to adjudicate the nullity of the contract. Despite refusing the AAAs' jurisdiction, the CRIM reaffirmed its claim in the amount of $161,697.60 for unduly payments and also requested a sum not less than $100,000,000.00 in damages for arrears, loss of

income, loss of business opportunities and for damaged or obsolete equipment and programming.--

24. Despite the refusal of the jurisdiction of Commercial Arbitration Court of the AAA, on August 1, 2001, the CRIM notified the Consortium of a Supplementary Interrogation, Petition for Admissions and Submittance of Documents.

25. The lawsuit in the heading was presented on September 27, 2001. In this lawsuit, the CRIM requested the Honorable Court, that among other things, would order the arbitration to cease before the AAA and declare the agreement null and inexisting ab initio.

26. On that same date, the CRIM presented an "Urgent Motion Requesting Preliminary Injunction", which concerns us.

27. On May 29, 2002, the arbitration panel submitted an order branching out the procedures to

rapidly see the CRIMs' argument regarding the validity of the LIMS contract. See Attachment D.

## DISCUSSION

### I. First Part – Under the Arbitration Law of Puerto Rico and the applicable jurisdiction of the Federal Arbitration Act, the injunction requested by the CRIM does not proceed.

#### A. The Arbitration Law of Puerto Rico is the correct legal frame under which the CRIMs' request can be granted.

It is well known that in Puerto Rico exists a strong policy that favors the arbitration of controversies. The Appeals Circuit Court sums it up very well:

> Finally, we are aware that in Puerto Rico (1) exists a strong policy that favors the arbitration of controversies; (2) that, once the arbitration is agreed upon, the courts lack discretion and must comply with the

arbitration agreed, and (3) that any doubt regarding the scope of the controversies that can be brought to arbitration must be granted in favor of arbitration. World Films, Inc. v. Paramount Pict. Corporation, 125 D.P.R. 352, (1990).

The interest of the state in promoting arbitration as a method of solving disputes is reflected in the arbitration presumption when a contract includes an arbitration clause. When the contracting parties have agreed that a particular type of dispute be fixed by arbitration, instead of legal litigation, a court must not harm that agreement and decide by itself the arbitration dispute. In this cases, doubts must be solved in favor of arbitration. U.C.P.R. v. Triangle Engineering Corporation, 136 D.P.R. 133 (194).

As an alternative method of solving arguments, arbitration is so very much favored, that it has a special law that rules it: the Arbitration Law. This law rules the procedure by which a party can validate or challenge an arbitration agreement. The same has almost identical provisions in its federal equivalent, the Federal Arbitration Act, 9 U.S.C. § 1 and next ("FAA"). See McGregor-Doniger, Inc. v. Superior Court, 98 D.P.R. 864, 870 (1970).[2]

Although the CRIM does not mention the puertorrican Arbitration Law in its document, the

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[2] Local law was approved during 1951, before the creation of the Commonwealth of Puerto Rico, therefore it lacks in its' origins any legislative intention, which is why for the adequate intelligent interpretation of its' dispositions, in absence of specific local interpretation, it is necessary to study the interpretation that the federal court has given to the equivalent federal disposition. It is well known that when a law is copied or adopted from a foreign law or from another jurisdiction, there is a presumption that the law is adopted with the interpretation that it has been given to in the jurisdiction from where it comes. See, E. Bernier and J. Cuevas Segarra, Approval and Interpretation of the Laws in Puerto Rico, 2nd. Ed., San Juan, Publicaciones J.T.S., 1987, page 451.

deceptive reasoning that it quotes in support of its' injunction request, refers precisely to sections 2, 3 and 4 of the FAA, equivalent to sections 3201, 3203 and 3204 of our law. It's suitable to say that this case also falls under cover of the federal laws since the requirement of the FAA that the arbitration contract be part of an interstate transaction ensues from the documents that the CRIM furnished with the injunction request and on which the CRIM falls back on.[3] Anyway, the result would be the same, under the applicable dispositions and almost identical as those of the FAA, as well as under our own Arbitration Law.

1. **The Arbitration Law specifically determines what must a party do to challenge or validate an arbitration agreement.**

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[3] That being so, the Honorable Court meets with a statutory interpretation under both laws.

The Arbitration Law establishes that an arbitration agreement "will be valid, claimed for and irreversible except for the legal grounds that exist for the reversal of any agreement". 32 L.P.R.A. § 3201. It specifically determines what must a party do to attempt to challenge or ignore an arbitration agreement:

> "(4) To provoke a controversy with regards to the existence or validity of an arbitration agreement...the party must enunciate the evidential facts that brings about such controversy and must:
> (a) Present a motion for the suspension of arbitration..."

32 L.P.R.A. § 3204. (Underlined by us.)

When a party presents a motion for suspending arbitration, the Court will decide on hearing the parties and:

> "If the court remains satisfied, after hearing the parties, that there is no substantial controversy regarding the existence or validity of an arbitration agreement..., the court will pronounce judgment requesting the parties to proceed with arbitration according to the terms of the agreement".

32 L.P.R.A. 3204(1)(Underlined by us.)

If the court finds, however, "that a controversy has risen regarding the existence or validity of the arbitration agreement..., the court will immediately proceed to hear such controversy. 32 L.P.R.A §3204(2). If from the hearing it is determined that there was **no** written agreement...the court will refuse the motion to compel to arbitration". 32 L.P.R.A. sec.3204(2).

That is, the Arbitration Law offers the same swiftness of benefits as the injunction, without claiming the requirements that binds jurisprudence to the injunction remedy. Why then didn't the CRIM use vehicle §3204 of Arbitration Law for ceasing the arbitration?

A possible answer is that it was inconvenient for the CRIM to call upon the Arbitration Law because under mentioned Law, the arbitration clauses are inseparable as an issue of fact, therefore they do not automatically fall under an impeachment of the general contract under which it is included.

2. **The arbitration clauses are divisible as an issue of fact; once the existence and validity of a contract <u>per se</u> has been determined, to impeach the whole contract must be referred to the arbitrators.**

When the Arbitration Law states that an arbitration agreement will be valid "except for the

legal grounds that exist for the reversal of any agreement", 32 L.P.R.A. §3201; and when it claims for the court to remain "satisfied that no controversy exists over the existence or validity of the arbitration agreement", 32 L.P.R.A §3204, it refers to the properly arbitration clause or agreement and said determination belongs to the court. But if it is determined that the arbitration clause as is, is valid, the general claim of the nullity of the contract belongs to the arbitrator.

The CRIM however, insists in its' theory that if the contract as a whole is invalid, "then the arbitration clause within the contract also is invalid, and the arbitrator lacks jurisdiction". CRIMs' Memorandum, page 40. It therefore claims, that the nullity claim of the whole LIMS contract must be judged by this Court and not by the panel of arbitrators.

The CRIMs' tactic of indirectly challenging the arbitration clause, through an impeachment of the whole contract, is not new nor original. It is rather old and the United States Supreme Court came face to face with it 35 years ago in Prima Paint Corp. v. Flood & Conklin, 388 U.S. 395 (1967).

In it, the United States Supreme Court raised the question that concerns us within the context of the FAA:

> "(1) Having determined that the contract in question is within the coverage of the (Federal) Arbitration Act, we turn to the central issue in this case: whether a claim of fraud in the inducement of the entire contract is to be resolved by the federal court, or whether the matter is to be referred to the arbitrators".

Prima Paint, 388 U.S. to page 402.

In its' opinion, the Court considered the three key dispositions of the FAA. Section 2, whose local equivalent is quoted in 3201; section 3 which is similar to our 3203 and section 4 of the FAA, almost the same as our section 3204. Following the guidelines of the Second Circuit—which decided that the arbitration clauses are divisible as an issue of fact---The Supreme Court found an answer to the question in section 4 of the FAA, almost identical to our §3204. We quote abundantly due the importance of the opinion:

> With respect to cases brought in federal court involving maritime contracts or those evidencing transactions in "commerce", we think that Congress has provided an explicit answer. That answer is to be found in §4 of the Act, which provides a remedy to a party seeking to compel compliance with an arbitration agreement.

Under §4, with respect to a matter within the jurisdiction of the federal courts save for the existence of an arbitration clause, the federal court is instructed to order arbitration to proceed once it is satisfied that "the making of the agreement for arbitration or the failure to comply (with the arbitration agreement) is not in issue". Accordingly, if the claim is fraud in the inducement of the arbitration clause itself – an issue which goes to the 'making' of the agreement to arbitrate- the federal court may proceed to adjudicate it. But the statutory language does not permit the federal court to consider claims of fraud in the inducement of the contract generally.

...

We hold, therefore, that in passing upon a §3 application for a stay while the parties arbitrate, a federal court may consider

> only issues relating to the making and performance of the agreement to arbitrate. In so concluding, we not only honor the plain meaning of the statute but also the unmistakable and clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts."
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> Prima Paint, 388 U.S. to pages 403-404.[4] (Our emphasis.)

As is the same here, Prima Paint did not challenge the arbitration validity in a specific manner and independently from the whole contract,

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[4] The Court made it clear, that the analysis would be the same, either provoked by a motion for suspension of legal action during arbitration (section 3203 ours and section 3 of the FAA) or by a motion to force to arbitration (section 3204 ours and section 4 of the FAA): "Section 4 does not expressly relate to the situations like the present in which a stay is sought of a federal action in order that arbitration may proceed. But it is inconceivable that Congress intended the rule to differ depending upon which party to the arbitration agreement first invokes the assistance of a federal court."

hereby the court resolved that the controversy regarding the illegality of the entire contract should submit to arbitration.

Under the Arbitration Law and the doctrine of *Prima Paint*, if the claimant pretends to obtain a total repeal of the contract that includes an arbitration clause, the court must adjudicate the controversy in relation to the validity of the arbitration clause as such. But if the illegality claims are made regarding the **entire contract**, then the arbitrator must adjudicate the controversy. R.M. Pérez & Associates, Inc. v. Welch, 960 F. 2d 534, 539 (5th Cir. 1992); C.B.S. Emp. Fed. Cr. Union v. Donaldson, et. Al., 912 F. 2d 1563, 1567 (6th Cir. 1990). Republic of Nicaragua v. Standard Fruit Co., 937 F. 2d 469, 476 (9th Cir. 1991).

We observe that the Prima Paint doctrine is obligatory since the matter relates to arbitration over

a contract with direct impact over interstate commerce.

**3. The divisibility of an arbitration clause subsists, without taking into account the theory that is used to challenge the contract that includes it.**

What the Arbitration Law and the FAA does is change the arbitration clauses as divisible as a question of fact. This is the rule under the First Circuits' jurisdiction, since Prima Paint:

> "The severability doctrine regarding arbitration clauses was set forth by the Supreme Court in Prima Paint Corp. v. Flood & Conklin...(omitted quotes).
>
> ...
>
> The teaching of Prima Paint is that a federal court must not remove from the arbitrators consideration of a substantive challenge to a contract unless there has been an independent challenge to the making of the arbitration clause

> itself. The basis of the underlying challenge to the contract does not alter the severability principle."

Unionmutual Stock Life Ins. V. Beneficial Life, 774 F.2d 524, 528 (1st Cir. 1985). (Underlined by us.)

In summary, the severability principle of the arbitration clauses subsist without taking into consideration the basis of the underlying challenge to the entire contract.

It could not be any other way if the high interest in favor of arbitration is to be valid. Another conclusion would result in absurd conclusions, since an arbitration clause if agreed to in order to choose a court and a specific procedure to solve controversies regarding the substance of a contract. It is well known that in the business world numerous controversies arise regarding the validity of a contract. But if the parties agreed to solve said

controversies through arbitration, it would be absurd and contrary to the favorable policy of arbitration, to permit a party to avoid arbitration by resorting to an argument of nullity which belongs to the arbitrator to solve.

The CRIM raises a very light way of merely alleging the nullity of the entire contract that contains the arbitration clause—without challenging the arbitration clause independently—is enough to withdraw the power of the arbitrator over deciding the alleged nullity of the contract. The CRIM says that "this is the most logical decision, since if the entire contract is nonexistent, the arbitration clause within it, also is and the arbitrator lacks jurisdiction". CRIMs' Memorandum, page 40.

What the CRIM does not discuss is what would happen at the end of the road if the Court

decides that the contract is not null.[5] Following the "logic" of the CRIM, this would then mean that the arbitration clause was good from the beginning and that the jurisdiction would have belonged to the arbitrator, and not the court that in the end solved the case. Even if the judgment was in favor of ENTEC, the undeniable fact is that the court chosen by this (and by the CRIM) would have been denied, as well as the benefits of speed and savings normally associated to the arbitration procedures.

On the other hand, from a strictly legal point of view, a juridical displacement is raised when a Court is found to hand out a decision by its' merits whose consequence is of retroactively preventing the

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[5] This is not merely hypothetical. Either before the arbitrators or before this Honorable Court, ENTEC will demonstrate that there was no defect whatsoever in preparing the contract for the LIMS project. See Habibes' Statement, Attachment B and discussion infra, over the power of this Court to make its' own appreciation of evidence even in the presence of federal guilty pleas.

Court with the jurisdiction to do so, which is inconsistent with the high interest of the state and federal, in favor of arbitration and suggests serious questions in the circumstances of its' due process.

This result would be contrary to the public policy in favor of arbitration, since it would place in doubt the effectiveness of contracting beforehand the arbitration court. It would be questionable how certain can a party be that it will have the court that it contracted, if with only challenging the entire contract, the party that betrays the contract achieves its' objective.

Under the quoted jurisprudence, it is clear that it is not enough to challenge the entire contract in order for a court to suspend arbitration.[6] An

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[6] Another way of looking at the fallacy that underlies the theory of the CRIM is to suppose that the arbitration agreement was signed on the same day but in a different document. There would be no doubt that if the CRIM only alleged nullity in the principal agreement, there would be no place for the suspension

independent impeachment is required from the constitution of the arbitration clause per se, which the CRIM has not done in this case.

4. **All the allegations of the CRIM, in its lawsuit as well as in the request for a preliminary injunction are addressed to impeach the entire contract, they do not impeach in an independent manner the validity of the arbitration clause, per se.**

The CRIM does not address its' remarks on the nullity or voidness of the arbitration clause as such.

What the CRIM alleges is "that arbitration clause included in section 22 of this contract is void and inexistent because the contract in which it is included is null and nonexistent". Par. 98 of the Lawsuit. (Our emphasis.) It also candidly acknowledges this in page 37 of its' Memorandum:

> "As explained previously, the fundamental purpose of

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of arbitration; it would have to challenge independently the agreement severed from arbitration.

> the preliminary injunction herewith requested is to keep the status quo until this Honorable Court decides through final and firm judgment if the contract that includes the arbitration clause...is null ab initio."

The CRIM recognizes that a written arbitration agreement existed. It cannot deny that when it remembered the same, the parties who contracted had the authority to do so. In short, neither in the lawsuit nor in the halting procedures, the CRIM claims to any defect specifically directed towards the arbitration agreement. The CRIM does not make any allegation nor offer of evidence to establish, that for example, in its' day, it would demonstrate that ENTEC paid illicit money in order to make the CRIM accept the arbitration contracting court.

None of the evidenciary pieces offered, supposing that they were admissible, demonstrated that the arbitration clause was obtained through fraud or subterfuge. It will neither demonstrate that the CRIM agreed to arbitration through an involuntary manner, or that the agreement was signed without the CRIMs' knowledge of an arbitration clause. The CRIM cannot dispute that the arbitration clause was proposed and actively negotiated. See, Statement from Habibe, Attachment B of this document, from where we take that "the arbitration clause included in the LIMS project contract was originally proposed by the CRIM in the contract model included in the bid documents handed in (sic) to all bidders. Afterwards, the same was modified by the CRIM during the negotiations addressed towards the signature of the contract".

Since the CRIM has not brought about any controversy regarding the validity or existence of an arbitration clause per se, section 3204(1) of the Arbitration Law calls for the Honorable Court to refer to the arbitrators the controversy raised by the CRIM regarding the nullity or voidness of the entire contract. The same is requested under the FAA.

5. **The federal cases that the CRIM quotes, are not inconsistent with the severability rules of the arbitration clauses. But even if they were, they give way before the ground rules of the Federal First Circuit.**

Even when the CRIM does not recognize the Arbitration Law of Puerto Rico in its' document, it quotes on behalf of its' injunction, cases from the Ninth Federal Circuit and from the Federal Court of Puerto Rico which precisely discuss sections 2, 3 and 4 of the FAA, the equivalent to our laws. Nevertheless, by doing so, ignores the regulation case

of Unionmutual and insists in the discarded theory that a mere general challenge to the LIMS contract is enough to stop arbitration. That, simply, is not the current rule and the same does not find support not even in the federal cases that the CRIM quotes.

In the Three Valleys Municipal Water District v. E.F. Hutton and Co., case, 925 F. 2d 1136 (9th Cir. 1991), the plaintiffs initiated a lawsuit after which the defendant filed motion to order arbitration, as agreed to by the contract, and therefore, stop the legal action. The plaintiffs opposed under the reason that the person who had signed did not have the authority to force the plaintiffs to arbitrate. In other words, the creation of the agreement which obliged to arbitrate, was challenged. The Circuit Court of Appeals held that:

> "To require plaintiffs to arbitrate where they deny that they entered into the

> contract would be inconsistent with the 'first principle' of arbitration that 'a party cannot be required to submit (to arbitration) any dispute which he has not agreed so to submit'".

Three Valleys Municipal Water District v. E.F. Hutton and Co., 925 F. 2d to page 1142.[7]

Our case is different to Three Valleys. Here the CRIM agrees that the contract exists and there is no doubt as to who signed the contract was authorized to do so. The CRIM does not impeach the authority of the former Executive Director to enter the contract.

The CRIM also quotes in a limited way the case of Rivera v. Clark Melvin Securities Corporation, 59 F. Supp. 297, 304 (D.P.R. 1999). In

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[7] Even when in Three Valleys the court set apart Prima Paint, in our judgment it did not have to do so because under Prima Paint any challenge to the creation of the arbitration agreement as so, belongs to the court.

this case, the plaintiffs' denied having signed or consented to submit its' disputes to arbitration. The plaintiffs' held that they had only signed documents authorizing the transfer of its' assets, but that they had not signed any document that had an arbitration clause. The District Court understood that a controversy of events existed regarding if indeed an arbitration agreement existed. Now again, the creation of an arbitration contract was challenged as such. This is not the case here, since there is no controversy regarding the fact that the CRIM and ENTEC subscribed the agreement.

The case of A.T. Massey Coal Co., Inc. and Inter Union, 799 F.2d 142 (4th Cir. 1986) is inconsistent neither with Prima Paint, although it does not quote the case. There the court resolved, under the general principles of "agency" if the signature of an arbitration contract by a corporation

forced its' parent company and affiliates to also arbitrate. Again, the critical part there was the creation of the arbitration contract properly said. This is not the case here, since the contractual agreement in itself is not in controversy.

Finally, in Par-Knit Mills v. Stockbridge Fabrics, 636 F. 2d 51 (3rd. Cir. 1980) the issue in controversy was also one of apparent authority and agency: if a production manager signed a purchase order containing and arbitration contract could oblige the company. The issue again is, of a direct challenge to the creation of an arbitration contract, an issue that is not present here since the CRIM admits that the arbitration agreement was signed and that on the date that the arbitration agreement was signed, the Executive Director was fully authorized to sign.

6. The arbitration clause object of this case, covers the nullity allegations of the contract.

Since the CRIM has not impeached the arbitration clause as such, no controversy exists regarding the validity or existence of same. What follows then is to determine if the nullity claim by the CRIM is covered by the arbitration clause, as was suggested by the Appeals Circuit Court. This is, so to speak, the second step that pertains to the Court when it grapples with a controversy on whether to order the parties to continue with arbitration: e.g. determine if the arbitration agreement includes the particular controversy alleged by the CRIM.

Regarding this particular, nevertheless, that refers to the scope or range of the clause, the CRIM does not express itself either. It has not challenged at any moment the range of the clause nor has it alleged that the controversy regarding the nullity of the contract is out of the range of the same.

The arbitration clause of the LIMS contract is typically broad and disposes, pertaining to:

> 22. ARBITRATION
> 22.1 ARBITRATION
>
> Any difference or disputes arising out of or in connection with the execution of this Agreement shall be settled by an amicable effort on the part of all parties.
>
> ...
>
> 22.2 JUDGMENT
>
> All disputes, controversies and questions that may arise under this Agreement that cannot be solved satisfactorily between the Contractor and CRIM shall be resolved any arbitration conducted in Puerto Rico in accordance with the Rules of the American

> Arbitration Association, by an arbitrator appointed by the Association. The arbitrator shall be governed by, and apply the substantive law of Puerto Rico and the findings shall be final and binding upon both the Contractor and CRIM and shall be a condition precedent to any right of legal action. Judgment on such award may be entered in any court having jurisdiction thereof. The parties shall share the cost of arbitration. (Underlined by us.)

In World Films, Inc., v. Paramount Pictures Corporation, 125 D.P.R. 352 (1990) our Supreme Court adopted the doctrine indicating that an arbitrability presumption exists when the contract has an arbitration clause:

> "(W)here the contract contains an arbitration clause, there is a presumption of arbitrability in the sense

> that "(an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage". AT&T Technologies v. Communications Workers, supra, page 650."

A sufficiently wide-ranging clause can include within the issues to be brought to arbitration the existence or not of the contract that contains the clause. Id., to page 363-363. CRIM has not demonstrated that the wide-ranging clause of the LIMS contract is not susceptible to an interpretation that covers the controversy over the nullity of the contract.

As a matter of fact, as accepted by CRIM in paragraph 57 of its' Lawsuit, what ENTEC claimed

in its' arbitration petition was the payment for amounts owed for work performed, maintenance expenses, materials and equipment, changes to specifications in the LIMS project and damages incurred by breach of contract. The supposed nullity of the contract is really a defense that CRIM brings against the already described ENTEC claims, which arise from the contract and without a doubt are covered by the arbitration clause.

It would be the CRIMs' concern the burden of demonstrating and alleging that the arbitration clause of the LIMS case does not cover the controversy over the nullity of the contract. Unionmutual, supra, page 528. The assumption in favor of arbitration is particularly strong since the party that wrote the agreement is the one opposing arbitration. A well-known treatise writer of commercial arbitration tells us:

> "§12:04 Presumptions and Burden of Proof. In light of the strong federal policy favoring arbitration, the modern trend is to resolve any questions regarding the arbitrability of an issue in favor of arbitration. The presumption favoring arbitration is stronger where the arbitration clause is broad. Where one of the parties to the agreement opposes the arbitration, the party challenging arbitration has the burden of proving that the dispute falls outside the scope of the agreement. Again, the presumption favoring arbitration is especially strong where the party contesting the arbitration drafted the agreement". Domke on Commercial Arbitration, §12:04 (Rev. Ed.) (Our emphasis.)

The part that challenges the arbitrability of an issue has the weight of the evidence, particularly when the clause was drafted and when the same is

ample. CRIM has not discharged that weight at all since it does not even address that issue in its' document. Therefore, it proceeds to return to the arbitration jurisdiction the issue of the supposed nullity of the contract.

**B. The CRIM submitted to arbitration and it is refrained from provoking a controversy over the existence or validity of an arbitration agreement.**

**1. Under the Arbitration Law, the CRIM is refrained by its' own acts to challenge the existence or validity of the arbitration contract.**

The motion to suspend arbitration that the Arbitration Law demands must be presented within 20 days upon notification of arbitration. Otherwise, the party "will remain thereafter, refrained from provoking controversy with respect to the existence or validity of the contract..."32 L.P.R.A. §3211. The same undertaking is required under the FAA.

CRIM paid no attention to this requirement. The Arbitration Law exists since 1951 and it is presumable that the legal representation of CRIM knew subject law by the date of September, 2000, when it was notified of the arbitration petition submitted before the American Arbitration Association ("AAA"), chosen entity by the parties to administrate arbitration. Nevertheless, CRIM did not show any intention of challenging the arbitration clause.

On the contrary, CRIM voluntarily appeared before the AAA and actively participated in choosing the arbitrators (prevailing over the position that there should be three instead of one which was ENTECs' position). See Attachment E of this document. CRIM answered the claim and rebuked for 20 million dollars, Attachment C. CRIM later on

aggressively initiated a discovery of facts. See Attachment F of this Memorandum.

Therefore, it is not strange that CRIM never presented a motion to suspend arbitration under the Arbitration Law. Simply, CRIM then did not doubt that the contractual obligation of the parties was to discuss their differences in the arbitration court and CRIM acted according to the agreement.

Eight (8) months after the arbitration petition was submitted—and after six (6) months of active participation in arbitration—that for the first time CRIM raised objections to the arbitration process in a written document before the arbitration panel. See paragraph 63 of the lawsuit. Represented this time by a new group of attorneys, CRIM again did not present the motion requested by the Arbitration Law. It presented instead the lawsuit in this case, and hitched a preliminary injunction motion to halt

the arbitration, ignoring completely the special procedure that to that effect offers the Arbitration Law.

Since CRIM paid no attention to the dispositions in the Arbitration Law, dismissing the special procedure that is requested to halt arbitration, this Honorable Court must apply section 3211 of mentioned law and determine that the CRIM is disabled in bringing about any controversy with respect to the validity or existence of the arbitration contract. 32 L.P.R.A . §3211.

2. The CRIM subjected itself to the arbitration process and cannot question now the jurisdiction of the chosen arbitrators.

When CRIM appeared before the AAA, in October, 2000, it did not make any reference to fraud allegation and did not question either the jurisdiction of the AAA. Lawsuit, par. 59. It must be pointed out, that when it answered the arbitration lawsuit,

CRIM had knowledge of the criminal case that was developing in the Federal District Court. The legal representative of the plaintiff requested the AAA a time extension on October 2000 to hold a telephone conference, "since CRIM documents related with the case had been requested through 'subpoenas' by the Federal Grand Jury". See Lawsuit, par. 59.

But CRIM did not present its' fraud defense and lack of jurisdiction when presenting its' answer to the arbitration petition on December 11, 2000. In not doing so and presenting the defense of breach of contract, CRIM surrendered to the defenses that it intends to use now to avoid the arbitration procedure.

The courts have indicated that having submitted to arbitration voluntarily, a party will not be able to challenge the authority of the arbitrator to adjudicate the dispute. For example, in *Piggly*

*Wiggly, etc. v. Piggly Wiggly*, Etc., 611 F. 2d 580, 584 (5th Cir. 1980), the Circuit Court of Appeals indicated:

> "Whether in technical legal terms the surrender of the possible argument that a certain dispute is not covered by the promise to arbitrate should be considered a waiver is not of present moment. On whatever basis it rests, waiver, estoppel or new contract, the result is that the grievance submitted to the arbiter defines his authority without regard to whether the parties had a prior legal

obligation to submit the dispute."

Piggly Wiggly, etc. v. Piggly Wiggly, Etc., 611 F.2d to page 584 (emphasis supplied). See also, Fortune Alsweet & Eldridge, Inc. v. Daniel, 724 F. 2d 1355, 1356 (9th. Cir. 1983) (the Court denied arbitration impeachment to one of the parties who participated in the same voluntarily for several months.); Jones Dairy Farm v. Local No. P-1236, 760 F.2d 173, 175-176 (7th Cir. 1985), cert. Denied, 474 U.S. 845 (1985), (if one the parties voluntarily submits to arbitration, it cannot argue afterwards that the arbiter lacks jurisdiction.)

One objection to the dispute of arbitration must be presented in a convenient way or it will be understood to be disclaimed. Conntech Development Co. v. University of Conn.,102 F.3d 677, 685 (2nd.

Circ. 1996). See also, Rock-Tenn Co. v. United Paperworkers Intern. Union, 184 F.3d 330, 334 (4th Cir. 1999). (The parties can express their arbitration agreement through their conduct; i.e. submitting voluntarily and without objections to the arbitration of a dispute.)

In the case of the heading, CRIM participated voluntarily in the arbitration process, without raising defense on the basis of lack of jurisdiction or fraud in the submittal of the contract. When changing administration, CRIM attempts now to raise mentioned defenses and abjure the arbitration procedure, to which it is binded not only contractually but by its' voluntary participation as well, in the process.

As discussed in this first part of this document, the adequate legal frame to address the request of CRIM to stop arbitration is not the

preliminary injunction but the Arbitration Law, the FAA and the interpretative jurisprudence of equivalent dispositions in both.

CRIM not only submitted voluntarily to arbitration, but ignored the specific procedure that the Arbitration Law provides to question the validity of an arbitration clause. Now it will be disabled to do so. Also, CRIM has not demonstrated that the arbitration clause in the LIMS contract is illicit per se nor that the controversies regarding the nullity of contract remains out of bounds from the arbitration clause. Therefore, the request for injunction must not be granted and an order to the CRIM to proceed with arbitration should be granted.

In the alternative, if the Court should decide to consider the merits of the injunction request as presented by CRIM, the second part that

immediately follows demonstrates that neither does the CRIM have a right for an injunction.

**II. Part Two – In the alternative, the injunction request does not proceed because the needed rules are not met.**

**A. The requested rules for granting an injunction are not present in this case.**

**1. Complying with a contractual agreement does not constitute irreparable harm.**

Among the rules to evaluate the source of a request for preliminary injunction are the nature of the damages that the parties may sustain if the injunction is granted or not granted, and of irreparable harm facing the lack of an adequate remedy by law. Mision Ind. P.R. v. J.P. and A.A.A., 142 D.P.R. 656, 680 (1997).

Regarding this rules, the CRIM essentially sustains that "to force a party that is not obliged to arbitrate, constitutes irreparable harm"; CRIMs'

Memorandum, to page 43 and that "to force a party to arbitrate unarbitrable controversies, as in the nullity of the contract, is an irreparable harm per se." Id, to page 44.

This reasoning might be true in a case that may well apply, but not here. As discussed in the first part of this document, CRIM has not made any allegation that proves that the arbitration agreement, per se, is null or voidable. It has not demonstrated either that alleged nullity of the contract remains out of bounds from the arbitration clause. Therefore, it is obliged to arbitration.

The public means for which the CRIM was created and its' municipal entity character, does not give the power of noncompliance with its' contractual obligations. The Supreme Court of Puerto Rico has indicated that to the effects of applying the dispositions and doctrines in reference to contracts,

the State is considered a private contractor. When subscribing a contract, the State as well as the other party are binded by the general regulations relating to the contracts. Campos Ledesma v. Compañía de Fomento Industrial de Puerto Rico, 2001 T.S.P.R. 1, 2001 J.T.S. 4, Op. of January 9, 2001.

CRIM agreed contractually to submit to arbitration. To meet its obligation does not constitute irreparable harm, being arbitration favored by the public policies and also when there is an agreement to that effect. It results contrary to law to qualify as harm the satisfaction of a contractual obligation, since it would leave to arbitration one of the contracting parties the validity and fulfillment of a contract. Article 1208 of the Civil Code, 31 L.P.R.A. § 3373.

The cases quoted by CRIM are substantially different to the facts of the case in the heading. In

Paine Webber, Inc. v. Hartmann, 921 F.2d 507 (3erd Cir. 1990) and Prudential Securities, Inc. v. Mills, 944 F. Supp. 625 (W.D. Tenn. 1996) the arbitration agreements disposed that arbitration controversies would not be submitted after certain amount of time based on a disposition within the contracts similar to those of a prescriptive period. That is why the obligation to arbitrate was objected in these cases. In Guntal & Co., Inc. v. Steinberg, 837 F. Supp. 85, 91-92 (D.N.J. 993), the arbitration contract had been subscribed by Steinberg & Philips, Appel & Walden, Inc. ("Phillips"). Afterwards, Guntal & Co., Inc. ("Guntal") had acquired certain assets from Philips, but with the explicit agreement that it would not be held responsible of Philips obligations before April 1993, like the controversy between Philips and Steinberg. Since there was no arbitration agreement

between Guntal & Steinberg, the arbitration did not proceed.

There is no doubt that our case is different. By not granting the injunction, the Honorable Court would not be obliging the CRIM to arbitrate in the absence of an arbitration agreement, since that agreement exists and is as valid and exact as any contract. See, 32 L.P.R.A. §3201.

2. The rest of the alleged damages would not result from the refusal of an injunction request, since allegedly they already happened.

Under the general title of "OTHER IRREPARABLE DAMAGES", CRIM sustains that the CRIM "has suffered other damages as a consequence of fraud...". CRIMs' Memorandum, page 44. It also claims that the fraud "has been subject to a wide press coverage, thus creating a lack of confidence in the good performance of the CRIM...". Id.

When saying that it has suffered serious damages "as a consequence" of the fraud related to the contract, and that a lack of confidence has already been brought upon the CRIM, CRIM is not alleging damages that will be caused when the injunction is not awarded, but for damages already sustained. How does forcing the CRIM to continue with the agreed arbitration would prevent damages already sustained? Said damages are tied to the merits of the case, that would be explained in its' day by the arbitrators; but they are not pertinent to granting or not granting the preliminary injunction.

3. The other damages that the CRIM describes as irreparable simply do not exist.

The CRIM also sustains, that the irreparable damage arises, because "the majority of the documents are in the Spanish language, therefore they would have to be translated, if the arbitrators

who do not know this language, are to decide the controversy". CRIMs' Memorandum, page 45.

First, it does not constitute a serious argument, that in a case of this significance, it is considered as irreparable harm the need and/or the cost of translating documents. What this demonstrates is that there are no real and important irreparable damages that would justify an injunction. Also, expenses of this type, that are to be satisfied with money, and which can be recuperated with court fees, are not by definition, irreparable.

Second, the CRIM forgets that of the twenty-two (22) documents that it attached to the 'Memorandum in Support of the Preliminary Injunction', only five (5) are written in Spanish. Of the documents enclosed to the Lawsuit, presented in the case referenced to in the heading, less than half of them are in Spanish. Even the documents that the

CRIM uses in advancing its' theory of the nullity of the contract, which it has presented in the arbitration process, which are the "Plea and Cooperation Agreements", are in English. It is an exaggeration to say there are many documents that must be translated in order to be presented to the arbits and therefore arbitration must be stopped.

Third, the CRIM also forgets that the contract between the parties is in English.

Fourth, the CRIM is considering contracting or it already contracted an English-speaking expert. In which language does the CRIM expect for this good man to testify and/or present his report?

Any expense incurred in translation will be shared by the parties, either before the arbiters or before the Court since some of the pertinent documents are in English and others are in Spanish.

Irreparable harm is "the one that cannot be applied with certainty nor duly compensated by any compensation that may be recollected in a legal action". Misión Ind. P.R., 142 D.P.R. to page 681. The promoter of the preliminary injunction has to demonstrate that, if the injunction is not awarded before the case is adjudicated by its' merits, it will sustain irreparable damages. Misión Ind. P.R., 142 D.P.R. to page 682.

It is evident that the CRIM has not demonstrated irreparable damage.

4. The arbitration procedure is being held according to the arbitration agreement.

The CRIM alleges that the arbits who will see the current case are not experts in puertorrican law and that only the hearing of July 15, 2002 will be held in Puerto Rico, contrary to the arbitration

clause included in the Agreement. The arbitration clause says:

> "All disputes, controversies and questions that may arise under this Agreement that cannot be solved satisfactorily between the Contractor and CRIM shall be resolved by arbitration conducted in Puerto Rico in accordance with the Rule of the American Arbitration Association, by an arbitrator appointed by the Association. The arbitrator shall be governed by, and apply the substantive law of Puerto Rico and the findings shall be final and binding upon both the Contractor and CRIM and shall be a condition precedent to any right of legal action. Judgment on such award may be entered in any court having jurisdiction thereof. The parties shall share the cost of arbitration".

There is no agreed request that the arbitrators be versed in the Puertorrican laws and CRIM has not demonstrated that the arbitrators that it chose are

not competent to solve the case by its' merits based on the Law of Puerto Rico. On the other hand, CRIM has nothing to fear. When an arbitration clause reflects the intention of the sentence to be according to law, it inherently has the judicial revision. U.C.P.R. v. Triangle Engineering Corp., 136 D.P.R. 133, 142-143, note 7, (1994) quoting Rivera v. Samaritano & Co., Inc., 108 D.P.R. 604, 609 (1979).

The arbitration process complies with the authorized opinion of the clause since the hearing will be held in Puerto Rico. Also, the discovery of evidence has been done in Puerto Rico. CRIM does not claim any reason for justifying in concluding that to arbitrate as requested by the contract, constitutes irreparable harm.

5. Entec has demonstrated the impossibility of the CRIM to eventually prevail by its' merits.

**a) It is not possible for the CRIM to prevail in its argument that the nullity of the**

**contract automatically invalidates the obligation to arbitrate.**

We refer to the discussion which over this issue we made in the first part of this memorandum.

CRIM does not claim that the arbitration clause per se is null. What CRIM alleges is that the arbitration clause is null because the contract in which it is included is null. Par. 99 of the Lawsuit.

Admits that "the fundamental purpose of the preliminary injunction herewith requested is to keep the status quo until this Honorable Court decides through a firm and final judgment if the contract that includes the arbitration clause...is null ab initio". CRIMs ' Memorandum, page 37. It adds that what it is trying to prevent is to "prevent the decision from being ineffective which pertains by law to this Honorable Court to make regarding the nullity of the

agreement". Id, pages 37-38. Since CRIM does not question the validity of the arbitration clause per se, it is not possible for it to prevail by its' merits in the second cause of action of its' lawsuit, which requests to stop the arbitration proceedings.

**b) In its' alternative, the CRIM has not demonstrated either that it will prevail with its' argument that the contract has to be annulled.**

The theory of CRIM is that the contract for the LIMS project is null and uses as its only basis the guilty pleas of the co-defendants, Bernardo Colón, Eduardo Burgos, Margarita Sanfeliz Wu, Carlos Serra Vélez, Benjamin Wu, Tommy Habibe Arias and Tommy Habibe Vargas. CRIM points out that guilty pleas admission arise from the conspiracy that began on June 1994. CRIMs' Memorandum, pages 7, 12, 13, 14, 17, 19 and therefore, the contract sustains nullity *ab initio*.

But the matter is not so simple. Whether the arbitrators or this Honorable Court the ones to decide this matter, an independent appreciation of the evidence will be needed. Once made, ENTEC holds that it will be demonstrated that there was no illegality in the preparation of the LIMS contract.

**(i) The guilty pleas quoted by the CRIM, are not conclusive evidence of the facts.**

CRIM sustains that the guilty plea declarations quoted are admissible as admissions of part, according to Rule 62(A) of Evidence, 32 L.P.R.A. Ap. IV R. 62. Nonetheless and contrary to what the CRIM seems to suggest, the admissibility of a document does not determine the evidentiary burden of the same. If albeit is true that a guilty plea is admissible in a subsequent civil action, it is also true, as determined by the Supreme Court of Puerto Rico,

that such allegation is not a concluding evidence of the facts.

In Maysonet v. Granda, 133 D.P.R. 676, 679 (1993), the Supreme Court resolved that the conviction judgment based on a guilty plea allegation is not a concluding evidence of the facts. There, the defendant Granda had plead guilty to involuntary manslaughter. The relatives of the victim, when at the moment of death was robbing the commercial establishment of Granda, called a lawsuit for damages against this. The First Instance Court, admitted the testimony of Granda to the effect that for the same acts a guilty plea was drawn up for involuntary manslaughter. Said testimony, being the only neglecting evidence presented by the plaintiffs, was considered as conclusive evidence. The Instance Court did not allow Granda to testify because of the reasons for which it accepted the pre-

agreed allegations agreement. Judgment was pronounced in favor of the plaintiffs, which was appealed by the defendants.

Before those facts, the Supreme Court sustained that facts evidenced in a legal cause are not conclusive to the point of excluding its' re-litigation in the subsequent civil action of damages. Although said acts constitute prima facie evidence of its existence, the damaged party could allege its' insufficiency or controvert it with another evidence. The judger will make its' own estimate of evidence, which can or not concur with the appreciation made in the criminal trial, under the fundamental premise that the nature and finality of a civil action is different to that of a criminal action. Maysonet, 133 D.P.R. to page 688 (quoting Toro Lugo v. Ortiz Martínez, 105 D.P.R. 229 (1976)). The judger of facts in a civil action is not unavoidably obliged to

reach the same conclusion obtained in the criminal trial. Morales Garay v. Roldán Coss, 110 D.P.R. 701, 707 (1981).

The suggested language for the month of June, 1994 as an entry point for the "conspiracy", ensues of the Version of Facts of the United States Government that accompanies the guilty pleas. This version of the facts, regardless of the fact that the co-defendants had made guilty pleas, was not litigated nor proved by trial. When a conviction judgment is based in a guilty plea, not one issue has been 'litigated'. Haring v. Prosise, 462 U.S. 306 (1983); United States, v. One Parcel of Real Property, Etc., 900 F.2d 470 (1st Cir. 1990). Even more, the version of the facts made by the government of the United States, under jurisprudence of the Supreme Court of Puerto Rico, is not concluding evidence of the facts.

Based on the guilty pleas, CRIM suggests that there is no controversy regarding the facts related to granting the contract. Such inference is false. See Declaration of Habibe, Attachment B of this document, from where facts issue forth that demonstrate that there was no fraud in granting this document. Contrary to what CRIM alleges, the fact is that after the contract was awarded the first approach from employees of CRIM occurred with the intention to extortion one of the principals of ENTEC. Previous to awarding the contract, payments never occurred, nor promises for payment, nor requests for monies in order to facilitate the awarding of the contract. See Attachment B, Statement of Habibe.

Due to the controversy stated, the guilty pleas are not concluding evidence of the supposed illicitness of the contract. Having nothing else to

say, CRIM cannot establish a possibility to prevail by its' merits.

**(ii) Neither are admissible against those appearing in court any statement made by Mr. Nelson Soto.**

On the other hand, CRIM sustains that Mr. Bernardo Negrón Montalvo conspired with Mr. Nelson Soto from June, 1994 to the effects that the LIMS project be adjudicated to Soto and his group. As indicated by CRIM, Nelson Soto is deceased and cannot defend nor deny allegations against him. Nevertheless, any act of Mr. Soto is not automatically chargeable or admissible with respect to the other co-defendants. In order to be admissible against the other co-defendants, it would have to be under Rule 62(E) of Evidence, 32 L.P.R.A. Ap. IV R. 62, which admits a statement from a co-conspirator made during the conspiracy and in obtaining the object of conspiracy.

The requirements for admissibility of the statements of a co-conspirator are: (i) that the statement was made during the term of the conspiracy, (ii) that the statement was made in obtaining the object of conspiracy, and (iii) that independent evidence exists of the conspiracy and the connection with the deponent and the accused with said conspiracy. These requirements must be established, ordinarily, as preliminary determinations under Rule 9. Pueblo v. Rivero Diodonet, 121 D.P.R. 454 (1988).

For example, in Pueblo v. Melía León, 143 D.P.R. 708, 736-737 (1997), the Supreme Court did not admit as evidence against Meliá León testimony from an undercover agent regarding expressions of the co-accused who implied Melía León. The State did not furnish evidence of the existence of a conspiracy in force between Melía León and the co-

accused, therefore the statements were not admissible as evidence for the prosecution against Melía León. The disposed requirement of Rule 62 (E) was not satisfied, were the statements whose admissibilities are requested, be done during the term of the conspiracy.

In the current case, the statements made by Nelson Soto are not admissible against the rest of the co-defendants if it is not proved, as has not been proved, that the statement was made during the term of the conspiracy, that the statement was made in obtaining the object of the conspiracy, and that independent evidence exists of the conspiracy and the connection with the deponent and the accused of mentioned conspiracy.

(iii)The statement that Messrs. Habibe were not victims by fraudulent acts of the CRIM's officers, is wrong and hypothetical.

THE CRIM also concludes that between June 1994 and July 1995, Tommy Habibe Arias and Tommy Habibe Vargas could not be extortion victims when instead they participated in bribes. CRIM forgets that on August 8, 2000, date on which the indictments were submitted in the Federal Court, the Federal Prosecutor Guillermo Gil, in press conference said:

> **"The charges presented here are extortion charges. It means, that public officers requested payment by the contractors. It does not work the other way around, that the contractors go to public officers. It is the public officers—'if you want to be paid, you must pay me first'".**[8]

This statement by Prosecutor Gil is totally consistent with Mr. Habibe Vargas sworn statement

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[8] The persons appearing in Court have a recording of said press conference, which they will submit to the Honorable Court at its' convenience.

regarding the inexistence of illicit payments prior to awarding the contract. The description of the Prosecutor also confirms that if anything illicit happened was after the contract was awarded, when ENTECs' principals were extortioned in exchange for authorizing payment for legitimate invoices.

CRIM indicates, that if they were victims, there was no sense for Messrs. Habibe and their corporations to buy in 1996 the stocks of the CEPI heirs and all the interest of HLRA in the contract with CRIM. CRIM cannot pretend to blame motivations to the co-defendants for making business decisions, much less without any evidence. CRIM also mentions, that Messrs. Habibe are not victims of extortion, since they paid Bernardo Negrón $25,000.00 when he was not President of the Board of Directors of CRIM. It is worth mentioning that such payment corresponds to a Joint Defense

Agreement, ensued within the federal case and as is evidenced by CRIMs' own attachments.

All of these assertions are only but concluding allegations, based o speculation, without any reference to documentary or testimonial evidence. It is interesting to observe that CRIM, for one thing, is erroneously attempting to make the Honorable Court to consider the plea allegations as concluding evidence of its' allegations, while on the other hand, ignores the guilty pleas to the effect in trying to 'conclude' that Messrs. Habibe are not victims of extortion.

CRIM, as promoter of the preliminary injunction, has the burden of proof. Rule 10 of Evidence, 32 L P.R.A. Ap. IV R. 10. Its allegatory conclusions are not enough to demonstrate a probability of prevailing by its' merits.

(iv) The contract for the LIMS project is entirely consistent with the Organic Law of the CRIM.

CRIM alleges that the authorized law of CRIM, Law 80 of August 30, 1991, known as "Law of the Center for Municipal Income Collection" ("Law No. 80"), only authorizes CRIM the power and faculty of involving itself in financing activities that are directly related with notifying tax payers the imposition of taxes with respect to property, collection of said imposition, land appraisal of all properties, the distribution of collected or assigned funds through legislative imposition and to keep the land registry up to date. CRIM adduces that the LIMS project is not consistent with mentioned powers and authorities.

Said interpretation of the authoritative law of CRIM is not in accordance with the spirit and text of the law. Law No. 80 was one of four laws that were part of the Municipal Reform that the Puerto Rico

Legislature held in the year 1991. The other laws that were part of the reform were the following: (1) Law No. 81 of August 30, 1991, also known as Autonomous Municipal Law ("Law No. 81")[9]; (2) Law No. 82 of August 30, 1991, Law of Municipal Patents; and (3) Law No. 83 of August 30, 1991, Municipal Contribution Over Property Law.

These laws were proclaimed in order to grant "the municipalities a greater degree of fiscal autonomy and of own government and new administrative and fiscal tools". López Gerena v. Ramos Cofresí, 140 D.P.R. 587 (1996). Article 1.002

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[9] Article 1.004 of Law 81, 21 L.P.R.A.A § 4002, establishes that: "The powers and authorities conferred to the municipalities by this subtitle and any other law, except any disposition to the contrary, will be interpreted liberally, in harmony with the good practice of an administrative and fiscal public policy, in a manner in which will be fostered, the development and implementation of the public policy announced in this subtitle of guaranteeing the municipalities the needed authority in the judicial, administrative and fiscal order to efficiently oversee the needs and well being of the residents of the same".

of the Municipal Autonomous Law, Law 81 of August 30, 1991, as amended, disposes the following:

> "As our collective thoughts have been maturing, the new social and political aspirations dictate a change in the legal order that provides the mechanisms so that the municipal governments will be more effective in solving their problems and promoting the particular social and economic development of its' respective jurisdictions.
>
> To solve that situation, it is declared as public policy for the Commonwealth of Puerto Rico to grant the municipalities, the mechanisms, powers and the needed legal, fiscal and administrative authorities to take upon a central and fundamental role in its' social, economic and urban development..."

CRIM was born, among other things, as an instrument for the municipalities to meet their

objectives of municipal autonomy. The best support for this position is held within the text of the Preliminary Recitals of Law 80. Said Preliminary Recitals establishes that: "the intention of this legislative piece is to expand municipal autonomy, establishing those needed mechanisms to strengthen and increase their fiscal capability."

The extremely narrow interpretation that CRIM assigns to its' powers and authority is an erroneous interpretation of Article 3 of Law 80, 21 L.P.R.A. § 5802. Said article partially provides that "primary responsibility" of CRIM is collect, receive and distribute the public funds that correspond to the municipalities. As we can see, CRIM classifies the responsibility described in the Article 3 as unique. The legislator classified same as "primary", which does not exclude other responsibilities, powers and authorities.

The Legislature conferred broad and numerous general powers to CRIM to establish the needed mechanisms to strengthen the fiscal capability of the municipalities. Although CRIM alleges in its' Memorandum that there is no disposition in law that authorizes CRIM to enter into the contract of the LIMS project, that same Article 4 (q) and (r) of Law 80, provides CRIM with following powers: (1) "Acquire through purchase, lease, donation or in any other legal form the equipment and property needed to accomplish the purposes of this chapter"; and (2) make and formalize agreements, contracts and any other needed documents in exercising the responsibilities that are conferred by law". (Underlined by us.)

Also, the authoritative law of CRIM establishes on purpose that mentioned Agency can and should "exercise any other duties and

obligations, and carry out activities, programs and agreements that are assigned or that are inherent or needed to achieve the purposes of this chapter." Article 4 (v) of Law No. 80 L.P.R.A. § 5803 (v). (Underlined by us.)

It is evident that the Legislature of Puerto Rico, entrusted CRIM a broad, extensive and adequate range of powers.

CRIM also criticizes the fact that the LIMS project would serve multiple uses. What CRIM criticizes here is the same thing that the Municipal Reform makes for: that CRIM serves as a key instrument in the development of the municipalities as entities with municipal autonomy and self-government. In essence, CRIM opposes that the municipalities be provided with the needed mechanisms, powers and legal, fiscal and administrative authority to assume a central and

fundamental role in its' social, economic and urban development.

In the case of Marketing v. Department, 118 D.P.R. 319, 326 (1987), the Supreme Court of Puerto Rico, reiterated:

> "Due to the complexity of the mandate granted to these administrative agencies it has been necessary for the Legislative Branch to delegate powers with broad and general norms, permitting a great discretion in the development and execution of the public policy".

(Emphasis supplied.)

Said decision is consequent with the decision of the Supreme Court in the case of López v. Junta de Planificación, 80 D.P.R. 646, 661 (1958), decided twenty-nine (29) years before the Marketing case, in which the Court expressed the following:

> "Due to the modern social and economical conditions (1) the Legislature cannot take into consideration the details of the government programs: its' essential function is that of establishing general guidelines and if it would try to intervene in the details it would not be able to properly carry out; (2) on a regular basis it is necessary to develop programs that require the constant supervision, technical knowledge and specialized experience of administrative organisms; and (3) and it essentially always results for the effective performance of those programs, to concede a broad margin of discretion to mentioned organisms."

Note that the municipal reform transferred many of the duties of development and land use to the autonomous municipalities. Therefore, López v. Junta holds particular relevancy.

In summary, it is a solid established rule that the Legislature can grant broad and general powers to an administrative agency and this (agency) has broad discretion to fulfill the imposed mandate of the legislator.

CRIM also criticizes the inter-departmental or inter-agency aspect of the LIMS project. The argument is that the LIMS project included, some areas that according to law CRIM did not have to oversee; as an example, the system could be used by multiple departments and agencies of the Commonwealth of Puerto Rico.

Said argument ignores the fact that the legislator expressly recognized the inter-departmental and inter-agency aspect of the modernization process for the land registry. Law 83 (Property Income Tax Law) orders all departments, agencies, authorities and instrumentalities of the

Government of Puerto Rico to bring forward (if needed) to CRIM, any report, work, done or in process of being performed, related directly or indirectly with the land registry, and inclusive, instructs the Planning Board and ARPE to notify any change in zoning, segregation and construction. Article 3.06 of Law No. 83, 21 L.P.R.A. § 5056.

It is precisely due to the fact that several other agencies and entities have authority over the land registry information, that LIMS was formed as an information system, that besides serving as a land registry up to date record of the real estate property of each municipality, would permit CRIM to interact with other agencies such as ARPE and the Planning Board, as well as with the municipalities and provide these agencies the access to pertinent information of CRIM with the purpose of speeding the flow of inter-agency information. In this manner it would be

assured that LIMS really would keep the land registry information up to date.[10]

In harmony with the approach of broad duties and obligations, the authoritative law of CRIM, when referring to the duties and obligations of its' Executive Director, establishes that this officer must:

> "(q) Provide all the Municipalities all the data and reports that will promote the efficiency of the municipal administration.
> "(u) Carry out all the tasks, duties and obligations that the Board has entrusted him with or that are provided by law

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[10] The International Federation of Geometers defines land registry as:

> "A Cadastre is normally a parcel based, and up-to-date land information system containing a record of interests in land (e.g. rights, restrictions, and responsibilities). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, the ownership or control of those interests, and often the value of the parcel and its improvements. It may be established for fiscal purposes (e.g. valuation and equitable taxation), legal purposes (conveyancing), to assist in the management of land and land use (e.g. for planning and other administrative purposes), and enables sustainable development and environmental protection".

See Attachment G, FIG Statement on the Cadastre.

> and perform all the necessary and convenient acts for the efficient accomplishment of its assignment."

These duties and obligations, and those previously mentioned, (which include development and land use in the autonomous municipalities) have the clear purpose of acknowledging CRIM as an assistance instrument and technical and administrative support to the municipalities in obtaining the ambition of greater autonomy and greater responsibilities as gathered in the Municipal Reform of 1991. Particularly, as previously exposed, the legislator imposed CRIM the obligation to provide the municipalities a database that allows to improve the efficiency and municipal administration in a way that is greater than just a mere fiscal undertaking.

These instruments of fiscal and administrative support take particular importance before the fact that the Municipal Autonomous Law authorizes the municipalities to take responsibility in issuing and administrating permits as part of the process of delegation of legal authorities as disposed by said law. 21 L.P.R.A §§4651 to 4661. This circumstance imposes for the relation between CRIM and the municipalities be strengthened in that area, requesting the municipalities the support of CRIM for their success.

The LIMS project is an instrument that makes feasible the Municipal Reform due to its ability of placing to the disposition of the municipalities, an efficient, economic and integrated system for the administration of municipal permits. Even more, for the municipalities with limited economic resources, this could be the only alternative to implement in a

cost-effective and rapid manner the permits offices. The effort of the LIMS project to become an income producing source for the municipalities falls upon the public policy of the Government of Puerto Rico in strengthening the municipal finances.

**(v) The LIMS project does not constitute an "operational" expense.**

CRIM claims in its' Memorandum that the agreement is null because the operational expenses surpassed the maximum of 5% of the total annual collections in account of property income tax contribution of the immediately preceding year. This argument is a fallacy because the LIMS project is not an "operational" expense.

The implementation and installation of the LIMS project does not constitute a working or operational expense. The LIMS project is a capital investment, whose gains are long term. LIMS

constitutes a capital investment, who was financed through The Chicago Corporation, which afterwards was acquired by ABN-AMRO. An operational expense or current expense is a recurring expense incurred by the ordinary course of the operations. The acquisition of a land information and management system cannot be classified as an operational expense, as are expenses for electric and water utilities, salaries and others who are similar.

Under the most basic principles of accounting, it is forceful to conclude that the acquisition of the LIMS system is not an operational expense. See, Michael H. Granof, Government and Not-for –Profit Accounting, John Wiley & Sons, Inc., 2001, pages 588-589:

> "It is widely accepted that interperiod equity dictates that capital assets may be financed and paid for differently than operating

> expenditures. Capital assets provide benefits over more than one year. Hence, it is asserted, they should be paid for by the taxes—and the taxpayers—of more than one year. It therefore may be not only acceptable, but desirable, to finance capital acquisitions with debt rather than with taxes or other operating revenues."

Based on the erroneous premise of the operational expense, CRIM claims that the deductions made by CRIM for the LIMS project together with deductions in account of operational expenses exceeded the 5% according to Article 22 of Law No. 80. Then it wrongly concludes that said deductions constitute an illegal action and ultra vires by CRIM. Under CRIMs' reasoning, since the deductions made by CRIM for the years 1996-97 exceeded 5%, all the contracts that constitute "expenses" for CRIM during those years would then

be null ab initio for being contrary to law. Consenting to that reasoning would be absurd and clearly against the public interest. See: Puerto Rico Telephone Co. v. Superior Court, 103 D.P.R. 200, 202 (1975) and APPR v. Superior Court, 103 D.P.R. 903, 906 (1975), in so far as to the principles that must be considered by the Instance Court at the moment of deciding if it issues or denies a preliminary injunction.

CRIM does not mention that besides the annual collections for municipal real estate property income taxes, it has other resources such as income generated by interests earned and municipal agreements. Neither does CRIM mention that in fiscal years 1995-96, 1996-97, 1997-98, 1998-99, 1999-00 and 2000-01 it had a surplus after subtracting income from its' disbursements. See

Attachments JYK, Reports DA-99-4 and DA-02-30 of the Controllers' Office.

**B. There is no probability of the cause becoming academic if the injunction is not awarded.**

This opinion responds to the fundamental purpose of the injunction which is to keep the status quo until trial is held by its' merits, so that the final pronounced judgment does not become academic or so that no greater damage is done while the trial is being held. Misión Ind. P.R., 142 D.P.R. to page 683.

The primary purpose of CRIM in this case is that the agreement with ENTEC is declared null so that it does not have to pay the owed balance under the LIMS contract. Arbitrators are very aware of the importance of this matter whereby the argument of fraud of CRIM will be the first theme that the arbitrators will see in the hearing to be held on July 15, 2002. See the Order of the Panel of Arbitrators of

May 29, 2002, Attachment D, which in paragraphs 7 and 8 indicate that the panel will have to branch out the case to first determine the existence and validity of the contract.

Therefore, if the injunction is denied, CRIM will not be deprived of the opportunity of presenting the argument, central point of its' case, which is the nullity of the contract, since before the arbitration panel, this will be the initial and only matter to be determined in the hearings set for July of this year. This means that CRIM will be able to dedicate all its' efforts and resources to the task of demonstrating that the contract is null.

But CRIM does not like this either since the nullity controversy will be rapidly elucidated, and CRIM wants more time. See, "Opposition to Term Request" presented by CRIM on May 30, 2002. To all appearances, the preoccupation is not that it will be

forced to arbitration against its' will. CRIM has never challenged the arbitration clause, which is why it admitted that there was an arbitration agreement. What CRIM hopes to achieve is to delay as much as possible ENTECs' claim, submerging it in a case with multiple parts that do not have the benefit of an arbitration clause.

If the injunction is granted, ENTEC would remain deprived of its' right to arbitration. Here, a damage would be incurred since one of the parties would forever lose its' right to arbitration. Even when the Honorable Court pronounces judgment in favor of those appearing in court, these would lose their right to use arbitration in the resolution of conflicts. Precisely, an arbitration clause in a contract is included to capitalize on the celerity of these procedures. Eliminating arbitration, even when prevailing in the merits of the case, destroys

the fundamental purposes of arbitration of speedily solving the controversy, without the expenses and delays of a legal process. Rivera, 108 D.P.R. to page 609.

c. The public interest will benefit from the validation of the arbitration clause.

CRIM claims that if the injunction is not awarded, it would have to participate in a costly process, contrary to public policy in favor of the proper administration of public funds. Again CRIM forgets that it is not above the law just for being a governmental entity. The State must comply with its' contractual obligations just as any other person has to do. Arbitration is not off-limits to the State as an alternative to solving disputes and it is known to be swifter and less costly than a legal action. Although it is true that arbitration entails compensation expenses for the arbiters, the fact that

they can dedicate themselves exclusively to the case generates efficiencies and economies that on the long run benefit the public treasury. Let us remember that it was CRIM who proposed the arbitration clause in this contract.

It must be also remembered that it was CRIM who insisted in having three arbitrators instead of one. Certainly, the general costs of that decision are only attributable to CRIM. Albeit the American Arbitration Association has invoiced CRIM for $78,700.00, CRIM has not paid anything. That amount had to be set aside with the AAA by those appearing in court, to insure that the arbitration procedure will be continued out of the failure to comply the obligation to satisfy the fees of the panel.

On the other hand, is it perhaps that CRIM considers that a panel of three arbitrators, all

professionals, do not have the integrity or capability to hear the evidence and pronounce a decision?

Before the reluctance of CRIM to submit to the arbitration that it contracted, preference should be given the high level of the states' interest in favor of arbitration as a serious and trustworthy method in the alternate resolution of disputes. Agreeing to stop arbitration under the facts of this case, injures said interest.

## CONCLUSION

The real controversy between CRIM and ENTEC is purely civil and commercial in nature. ENTEC rendered some services that have not been paid in full and CRIM wants to avoid paying for them. To obtain its' purpose, CRIM has tried to get advantage to the unfortunate fact that their previous employees and officers extortioned people related to

ENTEC for exchange in authorizing payment on due invoices. It has used that façade in trying to derail the arbitration process and sidetrack the attention to the merits of the payment collection claim by ENTEC.

But the criminal procedures have taken course, and the involved persons will suffer the consequences in the legal field. Although CRIM pretends to appear here as a champion in honesty to protect the people of Puerto Rico, that duty does not belong to it (Crim) nor is genuine. What it really is doing is inflaming a purely contractual and commercial controversy with the only means of avoiding the disbursement of money that without a doubt is owed to ENTEC.

The guilty pleas that constitute the only foundation of the CRIMs' case are not concluding evidence that the LIMS contract was obtained

through improper acts. ENTEC has demonstrated that the payments made to officers of the CRIM occurred after the contract was signed and that a conspiracy did not exist at all to "buy" the adjudication of the LIMS contract. There exists, at least, a serious controversy regarding this particular that CRIM does not want to recognize but it will clear up in due time before the corresponding court. It will then come to light the fragility of the whole theory that CRIM has created on the basis of appearances.

In the meantime, the pretentiousness of CRIM of eliminating arbitration on the basis of generalized allegations of the nullity of the contract must be strongly refused. CRIM does not have any factual legal ground to challenge the validity of the arbitration clause per se, nor to claim that the

supposed nullity of the contract is out of bounds of said clause.

Before this truth, the applicable law demands that the injunction be denied and all controversy be sent to the arbitration panel, including the alleged nullity of the contract as a whole.

WHEREAS, ENTEC respectfully requests the Honorable Court to dismiss the request for preliminary injunction presented by CRIM and order CRIM to proceed without delay to arbitration.

I CERTIFY that on this same date I have sent accurate and exact copy of this document by regular mail to Atty. María del Carmen Taboas, Fiddler, González & Rodríguez, LLP, P.O. Box 363507, San Juan, Puerto Rico 00936-3507.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on June 5, 2002.

GOLDMAN ANTONETTI & CORDOVA, P.S.C.
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Edgar Cartagena Santiago
Member No. 8466

**COMMONWEALTH OF PUERTO RICO**
**FIRST INSTANCE COURT**
**SUPERIOR COURT OF SAN JUAN**

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| CENTRO DE RECAUDACION DE INGRESOS MUNICIPALES<br><br>Plaintiff<br><br>v.<br><br>ENTEC CORPORATION; CONSULTA ECONOMICA Y PLANIFICACIÓN, INC.; BY ITSELF AND IN REPRESENTATION OF THE INTERESTS OF HECTOR L. RIVAS Y ASOCIADOS IN THE LIMS CONTRACT, HECTOR LUIS RIVAS & ASSOCIATES; TOMMY HABIBE ARIAS; TOMMY HABIBE VARGAS, HIS WIFE MRS. DE HABIBE VARGAS AND THE LEGAL COMMUNITY PROPERTIES COMPOSED BETWEEN THEM; HECTOR LUIS | CIVIL NO. KPE01-2012(603)<br><br>RE: |

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|---|---|
| RIVAS COLON, HIS WIFE MRS. RIVAS COLON & THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; JOHN PAUL STEPHENS REXACH, HIS WIFE MRS STEPHENS REXACH AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; EDUARDO BURGOS NEGRON, HIS WIFE MRS. BURGOS NEGRON AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; CANDIDA RODRIGUEZ LARRENDOWTTE; WANDA RODRIGUEZ HERNANDEZ; BERNARDO NEGRON MONTALVO, HIS WIFE MRS. NEGRON MONTALVO AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; CARLOS SERRA VELEZ, HIS WIFE MRS. | PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, NULLITY OF CONTRACT, DAMAGES, LAW AGAINST ORGANIZED CRIME AND/OR COLLECTION OF MONEY |

SERRA VELEZ AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; MARGARITA SANFELIZ WU, HER HUSBAND BENJAMIN WU AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; HABIBE ENTERPRISES, INC.; CREATIVE CONSULTING, INC. (previously known as ACTIVE CONSULTING, INC.); HABIBE COMPUTER CORP. (today known as VENTURE TECHNOLOGIES CORP.; GEOTEL, INC. (formerly known as WOOLPERT PUERTO RICO, INC.; and its stockholders, among others.

Defendants

**SECOND AMENDED COMPLAINT**

TO THE HONORABLE COURT:

Appearing in Court the plaintiff Centro de Recaudación de Ingresos Municipales (hereinafter "CRIM") through the subscribing attorneys and very respectfully expose, claim and request:

**THE PARTIES**

1. CRIM is an independent municipal entity and separate from any other government agency, created by Law No. 80 of August 30, 1991, as amended, 21 L.P.R.A. § 5801 et seq., with legal capacity to sue and be sued. 21 L.P.R.A. § 5803 (1). Its' primary responsibility is to collect, receive and distribute public funds that belong to the municipalities. Its' physical and postal address is the following: 1130 Muñoz Rivera Avenue, San Juan, Puerto Rico 00927-5009; P. O. Box 195387, San Juan, Puerto Rico 00919-5387.

2. Mr. Eduardo Burgos Lebrón was named Executive Director of CRIM on July 1, 1993 and

served continuously until November 30, 1999, date on which he resigned from his position.

3. The defendants ENTEC Corporation (hereinafter "ENTEC"), Consulta Económica y Planificación, Inc. (hereinafter "CEPI") are corporations organized under the laws of the Commonwealth of Puerto Rico. Héctor Luis Rivas y Asociados (HLRA) is, or was and/or represented a society, unto the date of the events.

4. ENTEC is dedicated or was dedicated unto the day of the events hereto referred to the business of selling computer hardware and software and is or was the exclusive representative of Intergraph Corp., in the Commonwealth of Puerto Rico. Intergraph Corp., was a corporation organized under the laws of the Commonwealth of Puerto Rico and distributor of computer hardware and software based in Huntsville, Alabama.

5. Mr. Tommy R. Habibe Arias (hereinafter Habibe, Sr.) was the Chairman of ENTEC, President and owner of Habibe Enterprises , Inc. Habibe Enterprises, Inc., was the parent company of several corporations including ENTEC.

6. Mr. Tommy O. Habibe Vargas (hereinafter "Habibe, Jr.") was the president and owner of ENTEC, a corporation organized under the laws of the Commonwealth of Puerto Rico.

7. Messrs. Habibe, Sr. And Habibe, Jr., also were owners and/or had control of the following entities: Habibe Computer Corp., today denominated Venture Technologies Corp.,; Engineering Technologies; Woolpert of Puerto Rico, Inc., and Creative Consulting, Inc., originally known as Active Consulting, Inc. From February, 1996 Mr. Habibe, Sr., controlled CEPI and upon November, 1996 ENTEC acquired the responsibilities and benefits of

Héctor L. Rivas y Asociados (HLRA) in the LIMS contract. In this way, Mr. Habibe, Sr. and/or his son Habibe, Jr., controlled the three entities that signed the LIMS contract; namely, CEPI, ENTEC and HLRA.

8. CEPI is dedicated or was dedicated towards the date of the events herewith referred to, to the business of providing administrative consulting services to several municipalities of the Commonwealth of Puerto Rico. After February 1996, ENTEC and/or Mr. Habibe, Sr. and/or Mr. Habibe, Jr., controlled and/or were owners of CEPI and/or the obligations of CEPI in the contract with CRIM, subject of this lawsuit. Prior to it, Mr. Nelson Soto was the President and owner of CEPI. Mr. Nelson Soto died on February, 1996, before the indictment was submitted in the referred criminal case in paragraph 13, infra.

9. HLRA is dedicated or was dedicated, towards the date of the signing of the LIMS contract, to the business of engineering consulting.

10. Mr. Héctor Luis Rivas was president and owner of HLRA, an alleged society. Mr. Héctor Luis Rivas currently lives in Cuba and his imprisonment has not been possible in the criminal case referred to in paragraph 13, infra, in which he was indicted.

11. Through "Agreement" with the date of November 18, 1996 ENTEC took the obligations and responsibilities of HLRA in the "Agreement with CRIM. In this "Agreement" Mr. John P. Stephens appeared as Vice President of HLRA.

12. On July 20, 1995 Mr. Eduardo Burgos and the consortium composed of ENTEC, CEPI and HLRA (hereinafter "the Consortium") signed a contract entitled "Agreement". Through mentioned

agreement, CRIM contracted the Consortium, composed of the defending corporations, for the design, development, installation and implementation of a digitalized land registry system called "LAND INFORMATION MANAGEMENT SYSTEM" (hereinafter "LIMS"). The agreed amount in accomplishing this project was approximately fifty-six million dollars ($56,042,352.00).

**Nullity of the "Agreement" due to Fraud, Lack of Consent and/or Illicit Cause**

13. On August 8, 2000 Mr. Burgos, the natural personal here acussed, and others, were indicted before the Federal District Court of Puerto Rico for violations to sections 1951, 1956 and 1957 of Title 18 of the United States Code. United States v. Bernardo Negrón Montalvo et al, Criminal no. 00-CR-660 (HL) (2000) (hereinafter, "the indictment".

(See Exhibit 1 attachment to the original Lawsuit, which is incorporated by reference).

14. Between June 1994 and March 2000 the defendants Bernardo Negrón, Margarita Sanfeliz Wu, Habibe, Sr., Habibe, Jr., Héctor L. Rivas Colon, John Paul Stephens, Eduardo Burgos Lebrón, Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Carlos Serra Vélez, Benjamin Wu and others conspired among themselves and with Mr. Nelson Soto so that Bernardo Negrón, Eduardo Burgos, Carlos Serra, Cándida Rodríguez, Wanda Rodríguez, and Margarita Sanfeliz Wu would receive money and costly items from Mr. Habibe, Sr., and Habibe, Jr., Héctor Rivas and John Paul Stephens in exchange for making sure that the Consortium would be granted the contract for the LIMS project, that the price of the LIMS project to be collected by the Consortium would be approved and that the

Consortium did not have difficulties in collecting the invoices that would be submitted for the LIMS project.

15. At the time of executing the contract object of this lawsuit Mr. Bernardo Negrón Montalvo was the mayor of the municipality of Villalba and also member and president of the Governing Board of the CRIM.

16. On or about July 1994, Mr. Bernardo Negrón introduced Mrs. Sanfeliz Wu to Mr. Burgos. Mr. Negrón informed and instructed Mr. Burgos to contract Mrs. Sanfeliz Wu as consultant to CRIM.

17. Since June 1994 until March 2000, Mrs. Margarita Sanfeliz Wu served as consultant and advisor to the CRIM.

18. On or about February 28, 1995, Mrs. Sanfeliz Wu was contracted to serve as consultant and work directly with the LIMS project.

19. At different periods of time between July 1996 and July 31, 2000, CRIM contracted Urbanística, LTD, whose contracts were subscribed by Mrs. Margarita Sanfeliz for consulting and advisory for the LIMS project.

20. Mrs. Sanfeliz Wu was the president of Urbanística, Ltd., a corporation organized under the laws of the Commonwealth of Puerto Rico, controlled by Margarita Sanfeliz and/or her husband, Mr. Benjamin Wu.

21. Mr. John Paul Stephens Rexach was a business partner of Mr. Rivas. As a matter of fact, Mr. Stephens appeared as Vice President of HLRA in the contract in which HLRA grants its' rights and obligations to CEPI with respect to the LIMS project contract, dated November 18, 1996.

22. Mr. Stephens was the president and owner of J.P. Stephens and Associates, Inc.

(hereinafter "J.P. Stephens"). J.P. Stephens was involved in the computer consulting business.

23. Mrs. Cándida Rodríguez Larrendowtte, was the Budget Director and later the Sub-Director for the CRIM. As a matter of fact, Mrs. Rodríguez held the title of Director of Budget and Operational Audit from July 1, 1993 to April 1, 1994, when she was named Assistant Executive Director II in the finance area of the CRIM. She held this position until August 1, 1995, when she was named Sub-Executive Director of the CRIM. She resigned on January 31, 2000.

24. Mrs. Wanda Rodríguez was the Director of the Finance Department of the CRIM. As a matter of fact, Mrs. Rodríguez held said position from July 16, 1996 to July 1, 1998 and from February 1, 2000 to September 1, 2000, when she was suspended of employment and salary until her destitution on

October 4, 2000. Before February 1, 2000 Mrs. Rodríguez held several positions in the CRIM; namely, from July 16 1993 to January 1, 1994, Head of Unit 1; from January 1, 1994 to March 16, 1994, Budgeting and Operational Audit Assistant; from March 16, 1994 to July 16, 1996, Head of Unit II. She was later named, as previously stated, Finance Director from July 16, 1996 until July 1, 1998 when she was named Director for the Operational Services Area until February 1, 2000 when she was again named Finance Director, as previously referred to.

25. Mr. Carlos Serra Vélez was the mayor of Corozal and served as member of the Governing Board of the CRIM. Mr. Serra Vélez was member of said Board from 1993 until 2000.

26. Mr. Benjamin Wu was a computer technician and husband to co-defendant Margarita Sanfeliz Wu.

27. On or about June, 1994, Mr. Nelson Soto, Mr. Habibe, Sr., Mr. Habibe, Jr., Mr. Rivas and Mr. Stephens, met and agreed to create a consortium with the purpose of submitting to the CRIM a proposal for the LIMS project, whose adjudication had already been promised to Mr. Nelson Soto by Mr. Bernardo Negrón.

28. On or about November or December, 1994, Mr. Habibe, Jr. prepared and submitted a model of his Request for Proposal to Mrs. Sanfeliz Wu. This model was prepared in order for the Consortium to meet with the requirements of the LIMS project.

29. On or about December 1994, Mrs. Sanfeliz Wu prepared and submitted to the CRIM a Request for Proposal based on the information that had been provided to her by Mr. Habibe, Jr.

30. On or about February 15, 1995, the Consortium submitted a proposal to the CRIM for the LIMS project.

31. On or about February 15, 1995, Mrs. Sanfeliz Wu submitted to the members of the CRIMs' Evaluation Committee mentioned Request for Proposal, based on the information provided by Mr. Habibe, Jr. Also, Mrs. Sanfeliz Wu submitted to the CRIMs' Evaluation Committee the Consortiums' proposal and another company's proposal.

32. On or about February, 1995, Mrs. Sanfeliz Wu provided Mr. Habibe, Jr., a copy of the proposal by the competitor of the Consortium, so that Mr. Habibe, Jr. would evaluate and inform Mrs. Sanfeliz Wu its' deficiencies.

33. On or about March 6, 1995, Mrs. Sanfeliz Wu prepared and submitted to the CRIM a general evaluation of the proposals by the

Consortium and the competitor, based on the information submitted by Mr. Habibe, Jr.. This evaluation was submitted to the CRIM for a final selection of the competitor who would be permitted to continue to the next phase of the evaluation process.

34. Of the indictment ensues, that on or about March 6, 1995, Mrs. Sanfeliz Wu prepared and submitted to Mr. Nelson Soto a copy of the disqualifying letter to the other company that had submitted its' proposal for the LIMS project. On this same day, Mr. Burgos sent said disqualifying letter.

35. On or about April 4, 1995, Mr. Burgos and Mrs. Sanfeliz Wu notified the Consortium that it had been selected to proceed to the next phase of the evaluation process for the LIMS project; that is, the visit by members of the CRIM to the principal offices of Intergraph in the Continental United States.

36. On or about May 12, 1995, Mrs. Sanfeliz Wu and Mr. Burgos sent a letter to the Consortium requesting that they submit a Price Proposal and Explanation of Cost, to the CRIM for the LIMS project.

37. On or about May 17, 1995, Mrs. Sanfeliz Wu requested from the Board of Directors of the CRIM that they name a Negotiating Committee to evaluate the Price Proposal and Explanation of Cost submitted by the Consortium. This Committee eventually included Mr. Bernardo Negrón and Mr. Carlos Serra.

38. On or about May 22, 1995, Mr. Habibe, Jr., Mr. Héctor Rivas and Mr. Nelson Soto, on behalf of the Consortium, submitted a report to the CRIM with the details of price and costs for the LIMS project amounting to approximately $56 million

dollars. This proposal was evaluated, recommended and approved entirely by Mrs. Sanfeliz Wu.

39. On or about May 25, 1995, Mrs. Sanfeliz Wu presented her evaluation of the proposal of costs of the Consortium to the Negotiating Committee of the CRIM. In this same date, Mr. Negrón, Mr. Carlos Serra and Mr. Rafael Cordero approved the proposal for prices and costs of the Consortium.

40. On or about September 21, 1995, Mrs. Sanfeliz Wu notified the Governing Board of the CRIM of the intention to grant the LIMS project to the Consortium.

41. On or about July 18, 1995, Mrs. Sanfeliz Wu submitted before the Governing Board of the CRIM a favorable analysis of the terms and conditions of the contract that was going to be granted to the Consortium for the LIMS project. At

all times, it was emphasized before the Board that the project was self-liquidating.

42. As said, on July 20, 1995 Eduardo Burgos and the Consortium composed of Entec Corporatin, CEPI and Héctor Luis Rivas and Associates signed a contracted titled, "Agreement". Through said agreement, the CRIM contracted the Consortium for the design, development, installation and implementation of mentioned LIMS project. The amount agreed for accomplishing this project was approximately fifty-six million dollars $56,042,352.00). Prior to signing the "Agreement", Mrs. Sanfeliz Wu presented Mr. Eduardo Burgos a document where it said that Margarita Sanfeliz, Bernardo Negrón and Eduardo Burgos would be receiving money by Entec, CEPI and HLRA.

43. The Consortium would receive payment for the agreed amount for the LIMS project work,

through invoices submitted to the CRIM, according to a schedule of payments. Payments must be related to the scope of work performed, to be exposed in a Project Implementation Plan. Nonetheless, instead of that, several payment schedules were submitted with monthly payments, without the payments having any relation to the real work performed in each period.

44. Once the Consortium started to receive the agreed money on the contract with the CRIM, the principals and associates of the defending companies started to compensate Mr. Bernardo Negrón, Mr. Eduardo Burgos, Mrs. Margarita Sanfeliz Wu, Mrs. Cándida Rodríguez, Mrs. Wanda Rodríguez and Mr. Carlos Serra, for having granted the contract, keeping the contract and facilitate the processing of payments of the contract. As a matter of fact, Mr. Burgos accepted the previously stated as true. See

Exhibit 2, "Change of Plea Hearing", of Mr. Eduardo Burgos, when pleading guilty to 3 counts, page 33, lines 16-20; and page 37, lines 2-4, attachment to the original Lawsuit, which by reference is incorporated.

45. The compensation granted to the persons mentioned in the preceding paragraph was through, but not limited to, cash, checks, payment for personal expenses, payment for home improvements, political contributions, airplane tickets and travel, cars and a boat for Mr. Burgos.

46. The indictment details payments to the following persons, made to them by different persons and/or entities: (a) payments to Mr. Bernardo Negrón amounting to approximately $99,393.85; (b) payments to Mr. Burgos amounting to approximately $238,500.00; (c) payments to Mrs. Sanfeliz Wu and/or through her husband Mr. Wu and/or Urbanística, LTD., amounting to approximately $484,118.94; (d)

payments to Mr. Serra amounting to $15,189.00; (e) payments to Mrs. Cándida Rodríguez amounting to $89,000.00; and (f) payments to Mrs. Wanda Rodríguez for $20,000.00. Incorporated by reference, the allegations of the indictment, in particular paragraphs 48 thru 115 detail what is relative to payments that are a product of bribery and/or extortion, the day, the person and/or entity who made the payment, the beneficiary to those payments, the quantity and form of payment and/or the description or concept of the payment made.

47. The previously detailed compensations were made in direct payments to Messrs. Bernardo Negrón, Eduardo Burgos and Carlos Serra and to Mrs. Sanfeliz Wu, Cándida Rodríguez, Wanda Rodríguez or to persons and entities designated by these to whom they owed monies or through third persons.

48. On or about December 5, 1997, Mr. Burgos and Mr. Habibe, Sr., opened a checking account in Banco Santander de Puerto Rico by the name of Active Consulting, Inc., with the purpose of depositing, so that they could withdraw money paid by for Mr. Habibe, Sr., to Mr. Burgos and Cándida Rodríguez. Active Consulting, Inc., did not involve itself in business, it was merely a façade and does not appear registered before the Department of State as a corporation. On or about October 2004, as part of the proceedings of this case, the attorneys of, among others, Messrs. Habibe, provided the plaintiff copy of a Correction Certificate filed before the Department of State where it states that the name Active Consulting, Inc., was corrected in order for the corporation to be named Creative Consulting, Inc. Afterwards, the CRIM obtained information that through Dissolution Certificate filed before the

Department of State on April 17, 2001, Creative Consulting, Inc., was dissolved. Nonetheless, because this legal action was initiated against Creative Consulting, Inc., previously known as Active Consulting, Inc., within three years of the dissolution of Creative Consulting, Inc., the same can and should be continued against Creative Consulting, Inc., previously known as Active Consulting, Inc.

49. On March 20, 2001, Mr. Burgos pleaded guilty to the violations made on charges 1, 18 and 26, consisting on violations to sections 1951 ("interference with commerce through extortion induced by fear of economic harm and/or under color of official right"), 1956 and 1957 (both related to "involving in monetary transactions with property deriving from criminal activities") of Title 18 of the United States Code. In the hearing held in the

Federal District Court of Puerto Rico, Mr. Burgos accepted as true, among others, the following facts:

> Had this case gone to trial, the United States would have proven beyond a reasonable doubt that on or about June 1994 and continuing through in or about March 2000 in the District of Puerto Rico and elsewhere, the Defendant, Eduardo Burgos-Lebrón, while serving as the Executive Director of Centro de Recaudaciones e (sic) Ingresos Municipales, also known as CRIM, participated in a conspiracy with Bernardo Negrón Montalvo, Margarita Sanfeliz Wu, Tommy R. Habibe, Sr., Tommy O Habibe Vargas, Héctor Luis Rivas, John P. Stephens Rexach, also known as "Jacko", Cándida Rodríguez Larrendowtte, Wanda Rodríguez Hernández, Carlos Serra Vélez, Benjamin Wu, Haydeé Figuroa Guzmán and José Rafael Vázquez and others, to un lawfully

affect commerce and the movement of articles and commodities in commerce by extortion under color of official right and fear of economic harm in violation of Title 18, United States Code, section 1951.

Essentially, Defendant Eduardo Burgos-Lebrán would and did request and receive sums of monies or third party services from co-defendants Tommy O. Habibe Vargas, Tommy R. Habibe Arias, and Héctor Luis Rivas, who were contractors that had obtained a $56,000,000.00 contract from CRIM related to and worked on a system for CRIM known as the Land Information Management System, also known as the LIMS project.

The Defendant requested and received these sums of money or third-party services in exchange for him assisting in the approval of the contract for the LIMS project and for

> his approval and authorization of payment vouchers in relation to the LIMS project. *United States v. Eduardo Burgos Lebrón*, Criminal No. 00-660 (2001). (See Exhibit 2 of the Lawsuit, which is incorporated by reference, underlined by us).

50. On July 23, 2001 Mr. Habibe, Sr., pleaded guilty to violations charged in charges 1, 18 and 26 of the indictment, Exhibit 3, attachment to the original lawsuit, which is incorporated by reference. These are the same charges to which Mr. Burgos pleaded guilty.

51. On February 14, 2002, Mrs. Margarita Sanfeliz pleaded guilty to federal felony. In doing so, she accepted having participated in a conspiracy from June 1994 to March 2002 with Eduardo Burgos, Bernardo Negrón, Tommy Habibe, Sr., Tommy Habibe, Jr., Héctor L. Rivas, John P. Stephens,

Cándida Rodríguez, Wanda Rodríguez, Carlos Serra, Benjamín Wu, Haydeé Figueora and José Rafael Vázquez.

52. Mrs. Margarita Sanfeliz accepted that the federal government had evidenced in trial, in synthesis, that she met with Habibe, Jr., to discuss the LIMS project and she requested and received from Habibe, Jr., a Request for Proposal model for the LIMS project, in which it was assured that the Consortium would comply with the requests.

53. Mrs. Margarita Sanfeliz also accepted that she furnished Habibe, Jr., a copy of the proposal from the competitor who appeared to bid so that Habibe, Jr. would evaluate it. Mrs. Sanfeliz accepted that she prepared and submitted to the CRIM a report that recommended the submitted proposal to the Consortium. This report, she accepted, was prepared using the evaluation made by Habibe, Jr.

54. Mrs. Margarita Sanfeliz also accepted that during the conspiracy period she requested and received money from Tommy Habibe, Sr., Tommy Habibe, Jr., Héctor L. Rivas and John P. Stephens, in exchange for having recommended the Consortium to the project and once granted the LIMS project, for recommending the approval and authorization of invoices. Finally, she accepted having received, together with her husband, Benjamin Wu, approximately $484,118.94.

55. To disguise and hide the payments, Mrs. Margarita Sanfeliz accepted that a false and fraudulent contract was granted for professional services between Habibe, Jr. and Benjamin Wu. Benjamin Wu submitted false invoices to Habibe, Jr., using Urbanística, Ltd., and then Habibe, Jr., issued the check to Urbanística, Ltd., or to Benjamin Wu.

56. On February 14, 2002 Mr. Benjamin Wu pleaded guilty to the serious federal offense of perjury. Mr. Wu accepted having lied to the Grand Jury when he testified that he had a legitimate contract with CEPI and that payments received by him were to disguise kickback payments to his wife Margarita Sanfeliz.

57. On March 11, 2002, Mr. Roberto Roca pleaded guilty to perjury, a serious federal crime.

58. Mr. Roberto Roca accepted having lied to the Grand Jury with respect to a check issued by Margarita Sanfeliz when he knew the explanation that Habibe, Jr., had offered regarding why said payment had to be done through Mr. Roberto Roca.

59. On March 20, 2002, Mr. Carlos Serra pleaded guilty to felony.

60. In doing so, he accepted that the federal government would have evidenced by trial that he

participated in a conspiracy with Tommy Habibe, Sr., Bernardo Negrón, Eduardo Burgos, Margarita Sanfeliz, Tommy Habibe, Jr., Héctor L. Rivas, John P. Stephens, Candida Rodriguez, Wanda Rodriguez, Benjamin Wu, Haydeé Figueroa and José Rafael Vázquez.

61. Mr. Carlos Serra accepted to having received a trip to Cuba from Héctor Rivas and $2,000 in political donations in consideration to granting the LIMS contract to the Consortium.

62. On April 24, 2002 Mr. Bernardo Negrón pleaded guilty to felony. In doing so, he accepted having participated in a conspiracy, from June 1994 to May, 2000. In said conspiracy, he accepted, the participants were Eduardo Burgos, Margarita Sanfeliz, Tommy Habibe, Sr., Tommy Habibe, Jr., Héctor L. Rivas, John P. Stephens, Cándida Rodríguez, Wanda Rodríguez, Carlos Serra,

Benjamin Wu, Haydeé Figueroa and José Rafael Vázquez.

63. Mr. Bernardo Negrón, upon pleading guilty, accepted that before June 1994, that is, prior to signing the LIMS contract on July 20, 1995, he met with Nelson Soto and agreed that the LIMS project would be awarded to Nelson Soto and his group. At that time, Bernardo Negrón was mayor of Villalba and President of the Board of Directors of CRIM.

64. Mr. Bernardo Negrón accepted that in or about July 1994, Bernardo Negrón introduced Margarita Sanfeliz to Eduardo Burgos, then Executive Director of CRIM, and informed Mr. Burgos that Margarita Sanfeliz would be contracted by CRIM as consultant for the LIMS project. He also accepted that on or about May 1995, Margarita Sanfeliz, following his instructions (Bernardo

Negróns'), recommended CRIM that the project LIMS be awarded to the group composed of Nelson Soto, Héctor Rivas, Tommy Habibe, Jr., Tommy Habibe, Sr., and John P. Stephens.

65. Finally, Bernardo Negrón accepted that between August 1995 and May 2000 he received the amount of $119,393.85 in cash, in checks, payment for his accounts, travel payments, payments for cars, and payments to his mortgage.

66. On April 25, 2002, Mr. Tommy Habibe, Jr., pleaded guilty to felony. In doing so, accepted that the federal government would have evidenced through trial that he participated in a conspiracy from or about June 1994 to on or about March 2000 with Eduardo Burgos, Bernardo Negrón, Margarita Sanfeliz, Tommy Habibe, Sr., Héctor L. Rivas, John P. Stephens, Cándida Rodríguez, Wanda Rodríguez,

Carlos Serra, Benjamin Wu, Haydeé Figueroa, and José Rafael Vázquez.

67. Mr. Tommy Habibe, Jr., admitted to having met with Margarita Sanfeliz to discuss the proposal to be submitted of the LIMS project before the project went to bids. He accepted that he and Margarita Sanfeliz agreed that Habibe, Jr., would prepare the specifications to be publicly submitted for the LIMS project.

68. Mr. Tommy Habibe, Jr., also accepted to having made payments in exchange for Eduardo Burgos and Bernardo Negrón to approve and authorize invoices and change orders related to the LIMS project. He accepted that, approximately $450,000.00 were paid to Eduardo Burgos and Bernardo Negrón, including a boat of $59,995.00 to Eduardo Burgos.

69. In addition, Tommy Habibe, Jr., accepted making payments to Margarita Sanfeliz through Urbanística, Ltd., an entity controlled by Margarita Sanfeliz, and through her husband, Benjamin Wu.

70. On June 17, 2002, Cándida Rodríguez and Wand Rodríguez pleaded guilty to felony.

71. Mrs. Cándida Rodríguez accepted that the government would have evidenced that she was assistant to Eduardo Burgos in the CRIM and that she received money from Eduardo Burgos who, as well, received said monies from Tommy Habibe, Sr., and others, in exchange for facilitating businesses with CRIM to Tommy Habibe, Sr., and others.

72. Mrs. Cándida Rodríguez also accepted that during the conspiracy period she received approximately $76,000.00 from Eduardo Burgos.

73. On June 17, 2002, Mrs. Wanda Rodríguez pleaded guilty to federal felony. She accepted that she was Finance Director of CRIM and that she was aware that Eduardo Burgos, then Executive Director of CRIM, was receiving money from Habibe, Sr., and others.

74. Mrs. Wanda Rodríguez also accepted, that on October 6, 1995, Tommy Habibe, Sr., cashed a check for $20,000.00 and gave that cash to Eduardo Burgos, who handed them to Wanda Rodríguez, and she being aware that said money came from illegal activities of Mr. Eduardo Burgos.

75. On June 17, 2002 Mr. John P. Stephens Rexach pleaded guilty to federal felony.

76. In doing so, Mr. Stephens accepted that the federal government would have evidenced through trial that he knew Margarita Sanfeliz,

consultant to CRIM, was receiving money from the members of the Consortium.

77. Mr. Stephens also accepted knowing and having been witness to a transaction through which a managers' check was issued for $100,000.00 and was handed to Mr. José Rafael Vázquez who, at the same time, deposited mentioned check in an account that he controlled. Several days afterwards, José Rafael Vázquez, transferred $80,000.00 to Margarita Sanfeliz. Eventually, Mr. Stephens issued a check to Urbanística, Ltd., for the remaining $20,000.00 from an account belonging to John P. Stephens & Associates.

78. In the following dates, the following persons pleaded guilty to federal felonies related to fraud in the LIMS contract:

a) December 17, 2001 –Guillermo Colón Santos—Perjury, for lying to the Grand Jury

when mentioning that Eduardo Burgos had paid for the construction of the gazebo in his home, when said construction was paid for by Héctor L. Rivas.

b) May 5, 2002 –Atty. José Rafael Vázquez—To having received from John P. Stephens a managers' check for $100,000.00 payable to him, and later on sending the money to Margarita Sanfeliz. Mr. Vázquez deposited said check and later transferred the amount of $80,000.00 to Margarita Sanfeliz. Mr. Vázquez accepted that he never transferred the remaining $20,000.00 and to having retained the money in payment for his work to the Consortium.

c) April 19, 2002—Haydeé Figueroa—secretary to Bernardo Negrón in Villalba City Hall. Of having received checks from Mr. Héctor Rivas in her name and for later on having furnished the money to Bernardo Negrón.

## Arbitration

79. The Contract between CRIM and the Consortium, composed by ENTEC, CEPI and HLRA for the LIMS project, dated July 20, 1995, includes an arbitration clause. Said clause literally transcribed, provides in its' pertinent part, as follows:

> 22. Arbitration.
>
> 22.1 Arbitration...
>
> 22.2 Judgment: All disputes, controversies and questions that may arise under this Agreement that cannot be solved satisfactorily between the Contractor and CRIM shall be resolved by arbitration conducted in Puerto Rico in accordance

with the Rule of the American Arbitration Association, by an arbitrator appointed by the Association. The arbitrator shall be governed by, and apply the substantive law of Puerto Rico and the findings shall be final and binding upon both the Contractor and CRIM and shall be a condition precedent to any right of legal action. Judgment on such award may be entered in any court having jurisdiction thereof. The parties shall share the cost of arbitration.

22.3 The Contractor shall not cause a delay of the work during arbitration proceedings unless such delay is agreed to by both parties." (See "Agreement", Exhibit 4, of the Lawsuit, which is incorporated by reference, to page 20).

80. The "Agreement" between CRIM and the Consortium disposes that the same shall be ruled and interpreted according to the laws of the E.L.A. (Commonwealth of Puerto Rico).

81. On September 20, 2000 the juridical entities here sued initiated an arbitration procedure, through a document titled "Demand for Arbitration", before the American Arbitration Association (hereinafter "AAA"), New York office, in relation to

the previously mentioned agreement. (See Exhibit 5 attached to the Original Lawsuit, which is incorporated by reference).

82. Due to the acquisition by ENTEC of the rights and obligations of HLRA in the LIMS contract, HLRA is not interested nor does it have any juridical competence to intervene nor claim in relation to the issues and controversies object of arbitration.

83. By information and/or belief, the AAA is a corporation organized under the laws of New York.

84. The request for arbitration of the Consortium was submitted in New York.

85. In this arbitration request, the entities ENTEC, CEPI and HLRA claimed from the CRIM payment on several sums of money allegedly owed for services performed, maintenance expenses, materials and equipment and changes in the specifications of the project. Also, damages were also

claimed as caused by the Consortium for breach of contract, delays in payments and libel. The total remedy requested by the defending corporations in its' arbitration petition exceeds ten million dollars ($10,000,000.00).

86. On September 28, 2000, Mrs. Raquel Olivo, case manager for the AAA, sent a letter to confirm that they had received mentioned arbitration petition and sent a copy of the "International Arbitration Rules" of the AAA.

87. On October 23, 2000, Atty. Manuel Pérez García, attorney who represented CRIM until approximately April 2001, sent a letter to Mrs. Olivo to inform her that he was going to represent CRIM in the case. Furthermore, in this letter Atty. Pérez requested an extension of time of thirty (30) days before holding the agreed conference call, since the CRIM documents related to the case had been

requested through "subpoenas" by the federal Grand Jury.

88. To this date, some of the documents that were handed in to the Grand Jury and/or the Federal Bureau of Investigations (FBI) in compliance with the production orders are still in custody by said Grand Jury and/or FBI. The requested documents by the Grand Jury and/or FBI are those referred to in the "subpoenas" attached to the original Lawsuit marked as Exhibits 7 thru 12, which are incorporated by reference, which constitute the majority, if not all of the documents of the CRIM related to the LIMS project.

89. On his behalf, the attorney for the claimant party in the arbitration procedure, requested that when choosing the arbitrators to be named, these will be examined in depth, as to: business contacts or similar with the government of

the Commonwealth of Puerto Rico, the CRIM, its' officers and /or agents and/or elected officers and/or members of any political group. The letter submitted by this attorney to the AAA, requests, in what is relevant:

> that the list of arbitrators be scrutinized for neutrality and specifically for prior and/or current and/or potential commercial or similar contacts with the government of the Commonwealth of Puerto Rico, the CRIM and/or officers and/or agents and/or elected officials or members of any political group.

90. As a result of this request the officers in charge of deciding the controversies that will be presented for arbitration will be completely unaware to the indictments, bribery, bribery offers and illegal payments that the project LIMS was subject to and they would be under the erroneous belief that the issue under arbitration is a mere issue of alleged breach of contract.

91. On December 11, 2000 the previous attorney to the CRIM answered the arbitration petition and, according to order issued by the arbitration panel, the subscribing attorneys were required to amend the same on July 13, 2001, due date for that, according to the scheduling order of the arbitration panel.

92. On March 21, 2001 the AAA named three (3) arbitrators, whose language is English and that live in the Continental United States.

93. For issuing claims there are fees relative to the amount of the claim. Between the Initial Filing Fee and the Case Service Fee the amounts for both items to pay (Total Fee) is itemized as follows:

| For a claim of | Total Fee |
| --- | --- |
| $0 up to $10,000 | $500 |
| $10,000 up to $75,000 | $750 |
| $75,000 up to $150,000 | $2,000 |
| $150,000 up to $300,000 | $3,750 |
| $300,000 up to $500,000 | $5,500 |

$500,000 up to $1,000,000

$8,000

$1,000,000 up to $7,000,000

$11,000

$7,000,000 up to $10,000,000

$16,000

Over $10,000,000

It is necessary to

contact the AAA

94. Even more so, the AAA demands payment for legal fees that include the following: (a) deposits prior to the hearing to cover ordinary expenses of the litigation, that may include the fees of the arbitrators, assistance expenses requested by the arbitration court, including its experts, the fees of the administrator, a reasonable fee for attorneys' fees

of the party that results favored and any other incurred expense in granting a provisional or emergency remedy; (b) additional deposits of the parties. Until this day, the AAA has requested the CRIM to pay more than $78,700.00.

95. On January 31, 2001, Atty. Norman Foy was named Executive Director of the CRIM and started his duties as such on February 2, 2001.

96. On April 2, 2001 the previous attorney to the CRIM informed the AAA that his contract for professional services with the CRIM had been cancelled and requested to be dismissed from the legal representation of the CRIM.

97. On April 12, 2001, the AAA notified a "Scheduling Order" with the following deadlines:

July 13, 2001 – Last day to amend allegations.

July 23, 2001 – Last day to answer amended allegations.

October 1, 2001 – End of discovery of evidence.

October 15, 2001 – Due date to provide the arbitration panel a document in which the parties agree to the legal facts and controversies to be solved through arbitration.

November 1, 2001 – the parties must exchange lists of witnesses, experts and the reports of the latter. Also the parties must exchange the sworn statements of those persons that will only testify this way and the numbered exhibits.

November 9, 2001 – exchange allegations prior to the hearing, lists of witnesses and rebuttal experts, with the reports of these experts.

November 9, 2001 – Due date to present motions.

November 16, 2001 – Due date for discovery of additional evidence of the experts.

November 19, 2001 - Due date to answer motions.

December 4, 2001 – arbitration hearing in Puerto Rico.

98. Afterwards, the Arbitration Panel ordered the celebration of an evidenciary hearing that would start on July 15, 2002.

99. The attorneys that subscribe, when assuming the legal representation of the CRIM, requested a suspension of forty-five days (45) explaining that, an evaluation process was being held by the CRIMs' new administration and its' attorneys related to, if the alleged contract in the request for arbitration had been obtained through

fraud, and among the CRIMs' ex-officers in conspiracy with the officers of the defending corporations, all of that in view of the criminal indictments. Among others. it was informed that it was in the process of determining if the validity of the arbitration agreement included in said contract could be questioned. The panel was informed of the guilty plea made by Mr. Burgos, former Executive Director of the CRIM, the only one who had pleaded guilty in the federal felony at that moment. The requested was denied and the previously notified schedule was confirmed.

During conference calls with the arbitration panel regarding the status of the proceedings, to which CRIM has especially appeared, without submitting to the jurisdiction of the panel, CRIM has requested the halting and/or overruling of the arbitration procedures since the guilty pleas of Mr.

Burgos Lebrón and T. Habibe, Sr., and the rest of the accused and the resulting nullity of the contract and therefore of the arbitration clause included in this. The arbitration panel refused to stop the proceedings in absence of a legal order from this Court to that effect, which, eventually, was submitted and confirmed by the Circuit Court of Appeals.

Nullity of the "Agreement" for being Contrary to the Organic Law of the CRIM

100. Law 80 of August 30, 1991, supra, demands the CRIM to collect, receive and distribute public funds belonging to the municipalities, originating from the basic income tax and the additional income tax imposed over all real estate and personal property of Puerto Rico. See 21 L.P.R.A., secs. 5802 and 5815.

101. The funds from the income deriving from said property income tax and the assignments

in account of subsidies and lottery must be deposited in a trust with the Government Development Bank and distributed according to the established procedures in articles 16 thru 18 of Law 80, supra, 21 L.P.R.A. secs. 5815-5817.

102. The disbursements authorized by law against said municipal funds in account of property income tax and the assignments in account of subsidy and lottery, are done according to a priority order established in article 17 of Law 80, supra, 21 L.P.R.A. sec. 5816. The withholdings that the CRIM can make to see to its' working and operating expenses are the fourth priority according to quoted law.

103. In relation to withholding operational funds of the CRIM, article 22 of quoted Law 80, supra, specifically establishes that the CRIM is authorized to separate an annual allowance in

account of operational expenses, for a maximum of 5% of the total annual collections in account of property income tax of the immediate former fiscal year.

104. CRIM, on the other hand, has the obligation to keep up to date the land registry of the property real estate of each municipality. Said undertaking is an essential part of the working and operational expenses of the CRIM. See article 4 of Law 80, supra, 21 L.P.R.A. sec. 5803.

105. The law does not authorize CRIM to deduct an additional entry from the income of the municipalities, without the approval of these, to cover the cost of financing the updating of the land registry through the LIMS project if this deduction has the effect of exceeding the specifically established 5% by article 22, supra, as the maximum to be

retained for working and operational expenses of said entity.

106. During fiscal years 1996-97, 1997-98, 1998-99 and 1999-2000, without the legal authority and exceeding the limits established by law regarding the authority to retain monies from the remittances of the municipalities, CRIM retained from the public funds belonging to the municipalities, an additional deduction identified as "LIMS Operational Expenses". For fiscal year 1996-97 the municipalities were withheld the amount of $5,102,195; for fiscal years 1997-98, 1998-99 and 1999-2000 they were retained the amount of $10,204,385 respectively. (See Exhibits 12, 13, 14 and 15, respectively, attachments to the original Lawsuit, which are incorporated by reference).

107. In addition, for its' operational expenses CRIM retained $16,815,632.00 in fiscal year 1996-97;

$18,731,419.00 in fiscal year 1997-98; $18,679,341.00 in fiscal year 1998-99; and $18,679,341 in fiscal year 1999-2000.

108. The result of the deductions made by the CRIM for the LIMS project together with the deductions for its' operational expenses, was that for fiscal years 1996-97, 1997-98, 1998-99 and 1999-2000, without legal authority, CRIM retained 6.83%, 8.57%, 4.46% and 8.09%, respectively, of the total property income taxes.

109. The deductions on account of "Operational Expenses of the CRIM" together with the deductions on account of "LIMS Operational Expenses", constitute, for each of the mentioned fiscal years, withholdings in excess of the five percent (5%) authorized by law.

110. The deductions for financing the LIMS project together with the deductions on account of

operational expenses that the CRIM makes to the public funds that must be remitted to the municipalities, exceeding the 5% according to Law, constitute an illegal act and "ultra vires" by the CRIM resulting in an irreparable harm, since it immediately prevents the municipalities from using its property, that is, the vital public funds for financing the services that the municipalities offer.

111. Also, in the Request for Proposal or "RFP" for the LIMS project, areas that by law do not correspond to the CRIM to handle, were included, as for example, that the system could be used by multiple departments and agencies of the Commonwealth of Puerto Rico.

112. Another example of the former statement of Request for Proposal is: "The LIMS must provide the ability to implement and integrate future applications, such as executive information

system, emergency management, emergency vehicle dispatching, infrastructure facilities modeling and management, road design, storm/sewer modeling and management, incident analysis, permit tracking, solid waste handling and site design, work order management, and parks and recreation facilities design and management".

113. There is no disposition in the authoritative law of the CRIM for this organism to become involved and finance activities that are not directly related with the notification to taxpayers of the taxing imposition regarding properties, the collection of said imposition, the land appraisal of all properties and the distribution of collected or assigned funds through legislative disposition.

114. To include in the description of the scope of the project some services that are extremely foreign to the responsibilities granted by the CRIMs'

law is contrary to the organic law of mentioned organism and led the CRIM to pay for services whose cost is inappropriate to be financed with municipal funds, therefore the contract is null for being contrary to the law and to the public order.

115. As a consequence to including in the request for proposal, in the well-favored estimate, and in the "Agreement" of the LIMS project the performance of services that are not contemplated in the CRIMs' Law, nor in any of the laws that govern the municipal activities, CRIM has illegally disbursed funds in excess of what is authorized by its' organic law. For example, as itemized in the document of proposed costs submitted by the Consortium on May 22, 1995, more than $2.3 million have been disbursed in direct costs to the subsystems PRISM and PERMITS. Computerized programs PRISM and PERMITS are not useful to the CRIM in

the release of its' obligations under its' organic law. There are other indirect costs related to the administration, accounting, evaluation and reports. The total cost of the improper inclusion of these programs has not yet been accounted for.

116. The bid held to grant the LIMS project is also null for violating the bid rules of the CRIM and public order.

## I. FIRST CAUSE OF ACTION

### Nullity of the Contract Between CRIM and the Consortium

117. Herewith is incorporated, exactly as if they were transcribed, all and each of the allegations of the lawsuit in its' Factual Background.

118. The "Agreement" related to the LIMS project was a product of fraud and conspiracy for the personal profit of Mr. Eduardo Burgos, acting as Executive Director of the CRIM, and the defendants.

This fraud constitutes the cause of the contract for the LIMS project to be illicit.

119. The "Agreement" between the CRIM and the Consortium is null and nonexistent for being contrary to the law, the morals and the public order.

120. The fraudulent acts of Mr. Eduardo Burgos and the officers of the CRIM related to granting the contract held between the CRIM and the defending corporations, as well as the payments of the submitted invoices under the same, are ultra vires and therefore null for being contrary to the law, to the morals and to the public order.

121. The CRIM has no authority by law, to agree to a contract held in violation of the law and the public order, nor for making withholdings in excess of 5% of its' annual budget in account of operational expenses.

122. The contract of July 20, 1995 held between CRIM and the defendants is null ab initio and therefore, inexistent due to lack of consent and cause and for violating the rules of the CRIM with respect to bids.

123. The LIMS contract is contrary to any public end. Also, the interests of the State were never legitimately represented in the negotiation, granting and execution of the alleged works of the Consortium since the LIMS contract was the product of a group of people, among them public officers of the CRIM, that were participating in criminal activities with the intention and purpose of defrauding the State.

124. The Consortium should return to the CRIM what this has charged for and payment for the damages sustained by the CRIM originating from the nullity of the contract.

## II. SECOND CAUSE OF ACTION

### Nullity of the Arbitration Clause

125. Herewith is incorporated, exactly as if they were transcribed, all and each of the allegations of the lawsuit in its' Factual Background and all and each of the allegations of the lawsuit in the First Cause of Action.

126. As previously alleged, on July 20, 1995 a contract was awarded between the CRIM and the defendants, entitled "Agreement".

127. Section 22 of this contract included an arbitration clause in which it is agreed that all disputes or controversies arising between the parties should be solved before an arbitrator designated by the American Arbitration Association ("AAA").

128. The contract held between the CRIM and the defendants is null ab initio and inexistent for

lack of consent and cause and for being contrary to the law, to the morals and to the public order.

129. The arbitration clause included in mentioned section 22 of this contract is null and nonexistent because the contract in which it is included is null and nonexistent.

130. What proceeds, as a matter of law, is that the arbitration clause of section 22 of the contract between CRIM and the Consortium composed by the defending corporations be declared null and nonexistent, and the immediate and permanent suspension of the arbitration procedures initiated by the Consortium before the AAA be discontinued.

## III. THIRD CAUSE OF ACTION

## Annulment of the Arbitration in Process

131. Herewith is incorporated, exactly as if they were transcribed, all and each of the allegations of the lawsuit in its' Factual Background and all and each of the allegations of the lawsuit in the First and Second Cause of Action.

132. The supposed arbitration clause states that the arbitration will be held in Puerto Rico. To that effect, in its' relevant part, states "disputes shall be resolved... by arbitration conducted in Puerto Rico...".

133. In the alternative, and if the "Agreement" and/or arbitration clause is not declared null, the arbitration initiated by the defending corporations must be annulled because it was established out of Puerto Rico being contrary to the specific dispositions in the supposed arbitration clause.

134. Even more, the costs of the procedure constitute an unreasonable disbursement of public funds. The CRIM can and should present the controversies related to the LIMS contract before the courts of Puerto Rico without the enormous and unjustifiable litigation costs that arbitration supposes, agreed to by a former public officer that pleaded guilty of felony in relation to precisely, the contract that includes the arbitration clause.

## IV. FOURTH CAUSE OF ACTION

### Collection of Money

135. Herewith is incorporated, exactly as if they were transcribed, all and each of the allegations of the lawsuit in its' Factual Background and all and each of the allegations of the lawsuit in the First, Second and Third Cause of Action.

136. In the alternative, and if the "Agreement" is not declared null, CRIM complied

with the dispositions of said "Agreement" and the Consortium failed to comply, received payment in excess of work performed, whereby CRIM does not owe anything to the Consortium and the Consortium should return to the CRIM what it has collected in excess.

137. The CRIM has paid twice for the same duties and/or activities and/or work. In the work plans exists an overlap of activities among the three members of the Consortium, thereby raising the price of the LIMS project. These payments constitute an unjust enrichment on behalf of the Consortium and the same must return to the CRIM the excess amount paid.

138. Until this date, the CRIM has disbursed to the Consortium, with charges to the LIMS project, the amount of $50,726,133.00. The Consortium has invoiced the amount of $52,495,279.00 to this day.

139. The value or cost of the work performed and delivered by the Consortium to the CRIM is less than the amount paid by the CRIM to the Consortium.

140. The CRIM has paid to the Consortium in excess of what it should have paid. Said amount is still object of analysis and calculation.

141. In addition, the CRIM cannot use the data that has been delivered up to now, by the Consortium.

142. Due to all of the above, the Consortium owes the CRIM an indeterminate amount of money, but estimated in no less than one hundred million dollars ($100,000,000.00).

## V. FIFTH CAUSE OF ACTION

### Nonexistence of Change Orders

143. Herewith is incorporated, exactly as if they were transcribed, all and each of the allegations

of the lawsuit in its' Factual Background and all and each of the allegations of the lawsuit in the First, Second, Third and Fourth Cause of Action.

144. In the alternative, and if the LIMS project contract is not declared null, it is requested that the alleged change orders alleged by the Consortium be declared null due to the following reasons.

145. The change order(s) did not follow nor do they accomplish the procedure disposed for them in the "Agreement", nor were they approved by the Board of Directors of the CRIM. Neither was a written document or contract, by which the CRIM had agreed to pay for the amounts that the Consortium now claims in account of collection orders.

146. The change orders were a product of fraud between the defendants.

147. In the alternative, if the change order(s) were declared valid, this(these) do not amount to $8.0 millions.

148. The Consortium presented the CRIM and this justified a change in the design of the LIMS project allegedly because the CRIM was interested in having a multi-agency and multi-purpose product. It was alleged that for this it was necessary to change the specifications of the aerial photography. According to the documents, the change in design carried an increase in the cost of the project amounting to $8.0 millions.

149. Since its' origins, when the request for proposal was prepared between Margarita Sanfeliz and Habibe, Jr., it was requested, if erroneously, that the LIMS system must satisfy not only the needs of the CRIM, but also those of an additional number of

agencies, since it was alleged that the project would be self-liquidating.

150. The Consortium, price quoted and designed the LIMS project.

151. The CRIM does not have to pay for a bad design. The Consortium must assume the responsibility since it was the Consortium who designed and price quoted the system since its' inception.

152. In addition, a change in design, and what is really involved is a change in the altitude from where the aerial photographs would be taken, cannot entail increases in the cost of entries not related to said change.

## VI. SIXTH CAUSE OF ACTION

### Damages

153. Herewith is incorporated, exactly as if they were transcribed, all and each of the allegations

of the lawsuit in its' Factual Background and all and each of the allegations of the lawsuit in the First, Second, Third, Fourth and Fifth Cause of Action.

154. The CRIM has sustained damages estimated in $100 millions, plus interests. These damages which they have been unable to account for with precision, but are the result of the acts of the defendants, including, but without limiting the supposed granting of a null and nonexistent contract, the supposed inclusion of a null and nonexistent arbitration clause, the supposed approval of change orders and expenses for interests of a loan(s) obtained for financing the LIMS project.

## VII. SEVENTH CAUSE OF ACTION

### Violations to the Law Against Organized Crime and Money Laundering of the Commonwealth of Puerto Rico

155. Herewith is incorporated, exactly as if they were transcribed, all and each of the allegations of the lawsuit in its' Factual Background and all and each of the allegations of the lawsuit in the First, Second, Third, Fourth, Fifth and Sixth Cause of Action.

156. Law No. 33 of July 13, 1978, as amended, 25 L.P.R.A., 25 L.P.R.A. secs. 971 and followings., denominated Law Against Organized Crime and Money Laundering of the Commonwealth of Puerto Rico (hereinafter Law Against Organized Crime), in its' section 971 (h) (d), grants a civil case action and authorizes to be compensated three times for damages sustained to any person that has sustained damage in his business or property for violations to § 971 (b) of said title.

157. The herein defendant has sustained damages for violations to entry in sections 971 (b) (c) and 971 (b) (e).

158. The co-defendants ENTEC, CEPI and HLRA, are or were on the date of the facts referred to in the lawsuit, enterprises or businesses as defined in the Law Against Organized Crime.

159. The union and/or group composed of ENTEC, CEPI, HLRA, Tommy Habibe, Sr., Tommy Habibe, Jr., Héctor Luis Rivas Colón, Eduardo Burgos Lebrón, Cándida Rodríguez, Wanda Rodríguez, Bernardo Negrón, Carlos Serra, Margarita Sanfeliz Wu and/or John Paul Stephens Rexach constituted, on the date of the referred to acts in the lawsuit, an enterprise or business as defined in the Law Against Organized Crime.

160. The union and/or group composed of Tommy Habibe, Sr., Tommy Habibe, Jr., Héctor Luis

Rivas Colón, Eduardo Burgos Lebrón, Cándida Rodríguez, Wanda Rodríguez, Bernardo Negrón, Carlos Serra, Margarita Sanfeliz Wu, Benjamín Wu and/or John Paul Stephens Rexach constituted, on the date of the referred to acts in the lawsuit an enterprise or business as defined in the Law Against Organized Crime.

161. The co-defendants Tommy Habibe, Sr., Tommy Habibe, Jr., Héctor Luis Rivas Colón, Eduardo Burgos Lebrón, Cándida Rodríguez, Wanda Rodríguez, Bernardo Negrón, Carlos Serra, Margarita Sanfeliz Wu, Benjamín Wu and John Paul Stephens are persons as defined in the Law Against Organized Crime.

162. The persons referred to in paragraph 161executed organized crime activities consisting of aggravated illegal appropriation of goods and/or funds of the CRIM and/or bribery and/or extortion, as

these are defined in the Law Against Organized Crime.

163. The pattern of organized crime activity was made and/or executed since on or about August 1995 until on or about March 2000.

164. The co-defendants mentioned in paragraph 161, however, initiated the conspiracy that culminated in the illegal appropriation and/or bribery and/or extortion since in or about June 1994.

165. The pattern of activities of organized crime, consisting in the aggravated illegal appropriation of funds and/or goods of the CRIM, bribery and/or extortion, consisted and/or included the payments and transactions that are itemized in Exhibit 16 of the original Lawsuit, which is incorporated by reference.

166. The co-defendant Mr. Tommy Habibe Arias accepted, when pleading guilty in Criminal

Case No. 00-660 (HL), U.S. v. Tommy Habibe Arias and others, to having made payments and transactions that are itemized in referred to Exhibit 16 attached to the original Lawsuit, which is incorporated by reference.

167. The pattern of activities of organized crime consisting with illegal appropriation of funds and/or goods of the CRIM, bribery and/or extortion, consisted and/or also included additional payments and transactions that are itemized in the enclosed indictment to the original Lawsuit, marked as Exhibit 1, which is incorporated by reference.

168. The persons named in paragraph 160 were employed and/or were associated to the enterprises and/or businesses referred to in paragraphs 158 and/or 159 and/or 160 of this Lawsuit; and they participated, direct or indirectly, in addressing the issues of said enterprise through a

pattern of organized crime activities, in violation to section 971 (b) (c) of Title 25 of L.P.R.A.

169. The co-defendants Tommy Habibe Arias, Tommy Habibe, Jr., Héctor Luis Rivas, Eduardo Burgos, Cándida Rodríguez, Wanda Rodríguez, Bernardo Negrón, Carlos Serra, Margarita Sanfeliz Wu, Benjamín Wu and John Paul Stephens by themselves and through others accomplished financial transactions using goods originating, derived or linked with specific illegal activities, as defined in the Law Against Organized Crime section 971 (a) (p) (i) (regarding control or possession of personal property related, obtained, derived, originating or in any way linked to violations to Title 33, Penal Code, specifically the crimes for aggravated illegal appropriation of goods and/or funds of the CRIM and/or extortion and/or bribery); section 971 (a) (p) (iii) (consisting in hiding

assets and committing the crime of extortion and/or bribery); and section 971 (a) (p) (iv), (consisting of making fraudulent banking transactions); and all of that was in an intentional manner and/or knowing that the financial transaction was planned totally or in part to hide and/or conceal the nature, location, source, ownership or control of the profits of the illegal activities previously referred to, in violation of section 971 (b) (e) of the Law Against Organized Crime.

## VIII. EIGHTH CAUSE OF ACTION

**To Lift Corporate Veil between Entec, CEPI, HLRA, Habibe Enterprises, Active Consulting, Inc., currently known as Creative Consulting, Inc., Habibe Computer Corp., currently known as Venture Technologies Corp., Woolpert Puerto Rico, Inc., currently known as Geotel, Inc. and its' Stockholders, Directors and Officers so that they are Responsible to the CRIM in their Personal Capacities**

170. Herewith is incorporated, exactly as if they were transcribed, all and each of the previous

allegations of this lawsuit. From the discovery of evidence made until now, the following ensues:

**A. Entec Corp.**

171. On December 24, 1992 it was filed before the Department of State of the Commonwealth of Puerto Rico the Certificate of Incorporation of Entec Corporation, from where it ensues that its' incorporators were Tommy O. Habibe Vargas (son or Jr.), Roberto V. Roca and Pedro R. Ortiz Ramos. Said certificate disposes that the corporation will have two stockholders, that said number may be increased to a maximum of eleven, that because the corporation is intimate it will be directed and administered by its own stockholders or by only one of them.

172. From 1995 until 1999 the stockholders for Entec were: Tommy R. Habibe (Sr.) – 50%; and Tommy O. Habibe (Jr.) – 50%.

173. From 1995 until 1999 the controller for Entec was Tommy R. Habibe (Sr.).

174. From 1995 until 1999 the Board of Directors of Entec was composed of Tommy R. Habibe (Sr.), Tommy O. Habibe, (Jr.), and Frankie Habibe.

175. From 1994 to 1999, as per the Corporate Annual Reports, the following were officers of Entec for the following years.

1994 President Tommy O. Habibe Vargas (Jr.)
Treasurer Tommy O. Habibe Vargas (Jr.)
Secretary Frankie Habibe Vargas

1995 President Tommy O. Habibe Vargas (Jr.)
Vice President Tommy O. Habibe Vargas (Jr.)
Secretary Frankie Habibe Vargas
Director of Operations Tommy O. Habibe Vargas (Jr.)

1996 President/Treasurer
Tommy O. Habibe Vargas (Jr.)
Secretary Frankie
Habibe Vargas
Director of Operations Tommy
O. Habibe Vargas (Jr.)

1997 President Tommy
O. Habibe Vargas (Jr.)
Treasurer Tommy
R. Habibe Arias (Sr.)
Secretary Frankie
Habibe Vargas
Director of Operations Tommy
O. Habibe Vargas (Jr.)

1998 President Tommy
O. Habibe Vargas (Jr.)
Secretary Frankie
Habibe
Treasurer Tommy
R. Habibe Arias (Sr.).

1999 President Tommy
O. Habibe Varga (Jr.)
Secretary Tommy
O. Habibe Vargas (Jr.)
Treasurer Tommy
R. Habibe Arias (Sr.)

176. Mr. Tommy R. Habibe (Sr.) was the "Chairman" of Entec.

177. During the years 2000 and 2001 the only director of Entec, its' President, Secretary and Treasurer was Mr. Wilfredo Marrero, as ensues by the Corporation Reports filed before the Department of State.

178. Mr. Wilfredo Marrero is and was at the time of the facts here alleged, employee of Habibe Sr. and/or Habibe, Jr. and/or any of the corporations controlled by these.

179. By December 31, 1994, seven months prior to signing the LIMS Contract held on July 20, 1995, the accumulated losses of the Entec business surpassed the value of its' assets in the accounting books more than five (5) times.

180. By December 31, 1994, seven months before signing the LIMS contract, Entec had a deficit of $204,019.54.

181. By December 31, 1995, five months after signing the LIMS contract, the capital reflected by Entec was $30,000 in stocks by par value of $1.00 and $858.00 of retained earnings of the year 1995, for a total of $30,858.00.

182. In spite of having received payments by the CRIM, in the amount of $1,333,350 since August until October 1995, presumably in account of alleged work by the LIMS project, the Statement of Operations and Retained Earnings of Entec by December 31, 1995 did not reflect a selling cost, nor does it reflect general or administrative expenses.

183. The year-end closing for 2001 the Balance Sheet of Entec reflected zero total assets ($0.00) and debts of $8,651,954. In other words, Entec had a negative capital of $8,651,954.00.

**B. Héctor L. Rivas & Associates (HLRA)**

184. On July 20, 1995, Mr. Héctor L. Rivas appeared to sign the LIMS contract in his capacity of President of HLRA.

185. To the date of the referred to acts in this amended lawsuit, Urbanística, Ltd., was an entity controlled by Margarita Sanfeliz Wu.

186. On November 18, 1996 Mr. John P. Stephens appeared in his capacity as Vice President of HLRA in a contract between Entec and HLRA.

187. On August 23, 1995 Héctor L. Rivas withdrew from his savings account $5,000.00 and with that bought an official check of the same amount payable to the Secretary of the Treasury, and as reference, Bernardo Negrón appears.

188. On November 13, 1995 HLRA issued check number 209 for $4,445.00 payable to Banco Popular and in reference to account 07-101-001-0377276 appears. Said account was, at the time, a

loan taken by Bernardo Negrón and Rosa E. Rodríguez with Banco Popular, loan to which the $4,445.00 check number 209 was credited.

189. On November 13, 1995 HLRA issued check number 210 payable to Banco Santander for $1,828.50 with reference number 800 3059759. This number belonged to a loan of Bernardo Negrón with Banco Santander.

190. On November 13, 1995 HLRA issued check 215 for $2,700.00 payable to Banco Popular – Visa with reference 4549 1505 8727 9012. Said Visa appeared in the name of Bernardo Negrón.

191. On or about December 12, 1995 John P. Stephens, using an account of J.P. Stephens and Associates, paid Urbanística, Ltd., $20,000.00 by means of check 1703.

192. On or about December 14, 1995, John P. Stephens, using an account of J.P. Stephens and

Associates, Inc., paid $15,000.00 to Urbanística, Ltd., by means of check 1704.

193. On or about January 20, 1996 John P. Stephens, using an account of John P. Stephens & Associates, Inc., paid $15,000.00 to Urbanística, Ltd., by means of check number 1743.

194. On or about April 17, 1996 HLRA paid Urbanística, Ltd., $20,000.00, by means of check number 316.

195. On April 22, 1996 HLRA issued check 413 for $3,990.00 payable to Haydeé Figueroa, then secretary to Mr. Bernardo Negrón. Mrs. Figueroa accepted in her "Plea Agreement" in U.S. v. Bernardo Negrón to having furnished said money to Mr. Bernardo Negrón.

196. On or about July 1, 1996, John P. Stephens, using the account of J.P. Stephens and

Associates, Inc., paid $5,000.00 to Urbanística, Ltd., by means of check number 1894.

197. On or about August 26, 1996, John P. Stephens, using an account of J.P. Stephens and Associates, Inc., paid $5,000.00 to Urbanística, Ltd., by means of check number 1957.

198. HLRA, by means of checks dated September 19, 1995 and November 13, 1996, paid $15,000.00 and $10,000.00, respectively, to G.C. Construction for the construction of a gazebo in the house of Eduardo Burgos.

199. On July 2, 1997 HLRA issued check 0911 payable to Haydeé Figueroa, then Secretary to Mr. Bernardo Negrón, for $800.00, whose money Mrs. Figueroa accepted in her "Plea Agreement" in U.S. v. Bernardo Negrón, was afterwards furnished by her to Bernardo Negrón.

200. On October 23, 1997 HLRA issued check number 1105 for $500.00 payable to "Cash" which was endorsed by Haydeé Figueroa, then secretary to Bernardo Negrón. Mrs. Figueroa accepted, in her "Plea Agreement" in U.S. v. Bernardo Negrón, that she furnished said money to Mr. Bernardo Negrón.

201. On November 18, 1996 HLRA, represented by its' vice-president John P. Stephens, and Entec, represented by his "Chairman" Tommy R. Habibe, subscribed an "Agreement" by means of which ENTEC accepted the responsibilities and obligations of HLRA in the LIMS contract for the economic consideration as stipulated in said "Agreement".

202. Upon said "Agreement" Entec substituted HLRA in the LIMS project and started invoicing CRIM on behalf of H.L. Rivas & Associates

(HLRA), although it requested that the name be issued payable to Entec.

**C. Consulta Económica y Planificación, Inc. (CEPI)**

203. On January 10, 1985 Consulta Económica y Planificación, Inc. (CEPI) filed its' Incorporation Certificate before the Department of State.

204. On September 3, 1998 the Department of State certified that CEPI was cancelled on August 18, 1994 for the reason of not filing annual reports for the years 1985 thru 1988, nor for the year 1994 nor for the year 1996. This is, to July 20, 1995, when the LIMS contract was awarded, CEPI did not exist as a corporation.

205. On or before February 27, 1996 Mr. Tommy R. Habibe (Sr.) bought all the stocks of CEPI

for $2 millions. This is how he happened to control CEPI.

206. The Annual Corporate Report for 1985 was filed on October 5, 1998 and it appears as directors and officers Tommy R. Habibe (Sr.) and Tommy O. Habibe and Frankie Habibe. The officials are: Tommy R. Habibe (Sr.), President' Tommy O. Habibe (Jr.), Treasurer; and Frankie Habibe, Secretary. It is consigned in this Annual Report that CEPI did not operate in the year 1985.

207. Nevertheless, before the Department of State another corporation report was filed for the year 1985, with the filing date of November 3, 1998. In this Report Mr. Nelson Soto was consigned as resident agent, director and president of CEPI. It is indicated, however, in this document, that Mr. Nelson Soto passed away on January 10, 1996. It is made known that the Vice President of CEPI is Mrs.

Maximina Morales, widow of Mr. Nelson Soto, and the Secretary is Mr. Juan Soto Soto. This Report does contain a Balance Sheet, which demonstrates that operations occurred during the year 1985.

208. The Annual Corporation Report of CEPI for the year 1986 was filed on October 5, 1998 and as officers and directors appear, Tommy R. Habibe (Sr.) and Tommy O. Habibe (Jr.). These vouch that there were no operations during the year 1986.

209. Nevertheless, on November 18, 1998, another Corporation Report was filed, before the Department of State, for the year 1986 sworn by Mrs. Maximina Morales and Mr. Juan Soto Soto on October 22, 1998. Said Report consign that the Directors were Nelson Soto, Maximina Morales and Juan Soto Soto. As President Mr. Nelson Soto was consigned and it is also consigned that he passed away on January 10, 1996. As Treasurer appears

Mrs. Maximina Morales and as Secretary Juan Soto. There is attached a Comparative Financial Statement for the years 1985 and 1986. This Statement demonstrates, among other things, a significant increase in current accounts receivables for the year 1986, which constitutes an indicator for operational activity for that year.

210. An Annual Corporation Report for CEPI for the year 1987 was filed before the Department of State on October 5, 1998. Appearing as directors and officers Tommy R. Habibe (Sr.) and Tommy O. Habibe (Jr.) and these vouch for no operations during the year 1987.

211. Nevertheless, another Corporation Report exists for the year 1987 filed before the Department of State on November 3, 1998, where it is consigned that the directors are: Nelson Soto, Maximina Morales, and Juan Soto. It is consigned

that the President is, Mr. Nelson Soto and it is informed that he passed away on January 10, 1996; the Treasurer is Maximina Morales and the Secretary Mr. Juan Soto Soto. As with the other reports filed on November, 1998, this report for the year 1987 also includes a Financial Statement.

212. The Annual Corporation Report for the year 1998 was filed on October 5, 1998. In the same it is consigned that the directors were Tommy R. Habibe (Sr.), Tommy O. Habibe (Jr.) and Frankie Habibe. As consigned officers Tommy R. Habibe (Sr.) – President; Tommy O. Habibe – Treasurer; and Frankie Habibe – Secretary. It is indicated that there was no operations.

213. On November 3, 1998 another Annual Corporate Report was filed for the year 1988. It was consigned in this report that the directors are Nelson Soto, Maximina Morales and Juan Soto Soto. As

consigned officers are Nelson Soto, President (passed away on 1/10/96); Maximina Morales, Vice President; and Juan Soto Soto, Secretary. This report is accompanied by a Financial Statement.

214. The Corporation Report for CEPI for the year 1989 was filed on April 10, 1992 subscribed by Nelson Soto and Juan Soto Soto. As consigned directors are Nelson Soto, Maximina Morales and Juan Soto Soto. It is indicated that the president is Nelson Soto, the Treasurer Juan Soto and the Secretary Maximina Morales. Includes a Balance Sheet.

215. The Corporation Report for 1990 was filed on April 10, 1992. The consigned directors are Mr. Nelson Soto, Mr. Juan Soto Soto and Maximina Morales. As President appears Mr. Nelson Soto; Treasurer, Mr. Juan Soto; and Secretary Maximina Morales. A Balance Sheet is accompanied.

216. A Corporation Report for the year 1992 exists with two filing stamps; one of August 9, 1993 and the other of May 4, 1994.

217. The Corporation Report for the year 1993 was filed on April 22, 1994. The consigned directors are Mr. Nelson Soto, Maximina Morales and Mr. Juan Soto Soto. As consigned officers are Mr. Nelson Soto, President; Maximina Morales, Treasurer, Subtreasurer and Secretary. Accompanied with a Balance Sheet.

218. On October 5, 1998 the Corporation Report for the year 1994 was filed. Consigned directors were Tommy R. Habibe (Sr.), Tommy O. Habibe and Frankie Habibe. Consigned officers are Tommy R. Habibe (Sr.), President; Tommy O. Habibe, Treasurer; and Frankie Habibe, Secretary. Accompanied by revised financial statements by a Certified Public Accountant.

219. The Annual Corporation Report for CEPI, for December 31, 1994, had not been filed before the Department of State at the moment of signing the LIMS contract on July 20, 1995.

220. The Financial Statement of CEPI for the year 1994 was filed, belatedly, on October 5, 1998, together with the Annual Corporation Report. This reflects a capital of only $66,580, while the contract that CEPI signed with the CRIM on July 20, 1995, was for $56 millions, demonstrating this as an inadequate capitalization.

221. The Balance Sheet attached to the Corporation Report for the year 1994 of CEPI reflected that, on December 31, 1994, said corporation had total assets in the amount of $512,266 and current debts for $445,686, including a banking overdraft of $36,163. Also, ensuing from said report that the retained earnings were of only

$16,580, that demonstrating that in the nine years of operations it had only achieved accumulating said amount in earnings.

222. The Corporation Report for 1995, filed on September 19, 1996, reflects as directors at the date of filing Mr. Tommy R. Habibe (Sr.). As consigned officers Tommy R. Habibe (Sr.), President, Treasurer and Secretary.

223. In CEPIs' financial statement for December 31, 1995, the year in which CEPI signed with CRIM the LIMS contract for $56 millions, a net loss in operations is reflected of $136,251.13. During this year CEPI received and collected from the CRIM, from August to December of 1995, $1,333,350.00. Allegedly, the administrative expenses for the year 1995 for CEPI were $2,532,539.25 and its sales were $2,396,288.12, generating the loss previously referred to.

224. In CEPIs' financial statements for December 31, 1995, year in which in the summer, specifically July 20, 1995, the LIMS contract was awarded, a deficit was reflected in its capital account of $62,053.57.

225. CEPIs' audited financial statements presented before the Department of State for the year 1995, reflected and operational loss of $112,053.57. Nevertheless, a financial statement not audited produced by the defendants reflect, for the same date, a net profit of $855,248.17. This was presented in the sales contract shares that Mr. Tommy O. Habibe (Jr.) made to the heirs of Mr. Nelson Soto, the only stockholder for CEPI. Mr. Habibe (Sr.) accepted in paying $2 millions for the shares of CEPI by means of contract dated February 27, 1996.

226. The Corporation Report of 1996 was filed on April 17, 1997. It is consigned in it, that the Director, the President and Treasurer in operation at the date of filing was Mr. Tommy R. Habibe (Sr.).

227. The Corporation Report of 1997 was filed on April 15, 1998 and consigned that the operating officers at the date of filing the requested report were Tommy R. Habibe (Sr.), Tommy O. Habibe (Jr.) and Frankie Habibe. Its' officers were: President – Tommy O. Habibe (Jr.); Tommy R. Habibe (Sr.), Treasurer and Chairman and Mr. Frankie Habibe, Secretary.

228. By the end of 1997, the stockholders distributed in dividends the total retained earnings until that moment.

229. A Corporation Report for CEPI for the year 1998 was filed on October 5, 1998. It is stated on the same that the directors are Tommy R. Habibe

(Sr.), Tommy O. Habibe (Jr.) and Frankie Habibe. As consigned officers Mr. Tommy O. Habibe (Jr.), President; Tommy R. Habibe (Sr.), Treasurer; and Frankie A. Habibe, Secretary. This report reflects a capital deficit of $1,225,662.00, for a year in which income for consulting services were recognized amounting to $3,721,862.00.

230. The Corporation Report for 1999 has two filing stamps; one of September 18, 2000 and the other for April 4, 2001 and was signed by Mr. Tommy R. Habibe (Sr.). As consigned directors are Mr. Tommy R. Habibe (Sr.) and as officers Tommy O. Habibe (Jr.), President and Secretary; and Tommy R. Habibe (Sr.) as Treasurer. The attached financial statement reflects a capital deficit of $1,043,866.00.

231. The Corporation Report for the year 2000 was filed on April 17, 2001. It states that the operating director at the date of filing is Mr. Wilfredo

Marrero and the Secretary which is Mr. Wilfredo Marrero. From the same ensues that said corporation, for December 31, 2000, had losses for $2,911,535.00, which was reflected as a capital deficit of $2,861,535.00.

232. The Corporation Report of 2001 was filed on July 22, 2002 and states that the operating director and the President, Secretary and Treasurer for CEPI is Mr. Wilfredo Marrero, who is an employee of Habibe, Sr., Habibe, Jr., and/or its' corporations. By net worth a deficit is informed of $1,533,296.00.

233. Between December 31, 1996 and November 20, 1997 Mr. Benjamin Wu received payments from CEPI in the amount of $224,089.94. Mr. Wu, when pleading guilty to perjury in the case U.S. v. Bernardo Negrón, Criminal No. 00-660, accepted the Plea Agreement signed by him in U.S. v.

Bernardo Negron, that he did not have a legitimate contract with CEPI and that the payments received were payments disguised as kickback for his wife, the codefendant Margarita Sanfeliz Wu.

234. Entec has no resources to respond to the CRIM for the claimed damages in this litigation.

**D. Active Consulting, Inc.**

235. As stated, Active Consulting, Inc., does not appear as registered as such before the Department of State of the Commonwealth of Puerto Rico. The name was corrected in order for the corporation to be named Creative Consulting, Inc. On April 17, 2002, as per Certificate form the State Department, the corporation, Creative Consulting, Inc., previously denominated Active Consulting, Inc., was dissolved. Nevertheless, the court proceedings litigation was filed within three (3) years of the dissolution, therefore the same can and should be

continued against Creative Consulting, Inc., previously denominated Active Consulting, Inc.

236. Creative Consulting, Inc., had an account in Banco Santander and generated checks all under the name of Active Consulting, Inc. Mr. Eduardo Burgos accepted before the Federal Court in U.S. v. Bernardo Negrón, that codefendant Tommy R. Habibe (Sr.) deposited money in said account for the use of Mr. Eduardo Burgos and Cándida Rodríguez. He accepted that since on or about November 1997 thru May 1999, through third party, Mrs. Cristina Alvarez, aunt of Cándida Rodríguez, withdrawals were made from such account for $37,500.00 that were furnished to Mr. Burgos in cash.

237. A check from "Active Consulting, Inc.", also exists to Habibe Enterprises in the amount of $20,479.17.

## E. Habibe Computer Corp. (HCC)

238. Habibe Computer Corp., (HCC) is a corporation, incorporated on November 26, 1980 before the Department of State. Its' incorporators were Mr. Tommy R. Habibe (Sr.), Dharma Vargas Durán and Wilfredo Marrero.

239. On June 19, 2000 an amendment to the incorporation certificate was filed to change the name of Habibe Computer Corp., by the name of Venture Technologies Corp., whose certificate appears signed by Tommy R. Habibe as officer.

240. The Corporation Report of 1980 tells that the directors of HCC were Tommy R. Habibe (Sr.), Wilfredo Marrero and Sonia Habibe. Its' President was Tommy R. Habibe (Sr.), its' Vice President Wilfredo Marrero, its' Treasurer Sonia I. Habibe and its' secretary Wilfredo Marrero.

241. The Corporation Reports for 1995 and 1996 consign that the directors were Tommy R. Habibe, Tommy O. Habibe (Jr.), and Frankie Habibe. In 1995 the President was Tommy O. Habibe (Jr.), the Secretary and Vice President was Frankie Habibe and the Treasurer was Tommy O. Habibe (Jr.). In 1996 the President and Treasurer was Tommy O. Habibe (Jr.) and the Secretary Frankie Habibe.

242. On February 12, 1996 Fiber Glass Technologies of Puerto Rico, Inc., issued check number 337 for $50,000 to Margarita Sanfeliz. On December 31, 1995 Habibe Computer Corporation issued check 5829 to R&R Engineering for $50,000. Both Fiber Glass Technologies of P.R., Inc., as well as R&R Engineering are corporations were Mr. Roberto Roca Buigas was, at least at that moment, officer. Specifically in the Annual Corporation Reports for

the years 1996, 1997 and 1999 it is consigned that Mr. Roberto Roca is the President of R&R Engineering Products, Inc., and in the Corporation Report for 1995, Mr. Roberto Roca Buigas is consigned as Vice President of Fiberglass Technologies, Inc.

243. Mr. Roberto Roca pleaded guilty of perjury in U.S. v. Bernardo Negrón for having lied to the Grand Jury during the investigation of the case, for which it was pertinent to determine if Mr. Roberto Roca had paid money to Margarita Sanfeliz on behalf of Habibe Sr. and Habibe Jr. The payment of Habibe, Sr. and Habibe, Jr., through its' corporations, for Margarita Sanfeliz and the repayment to Mr. Roberto Roca and/or its' corporations was made through referred to checks in paragraph 242. This payment to Margarita Sanfeliz was part of the fraud scheme of the LIMS contract.

244. Habibe Computer Corp., in addition to referred to check in paragraph 242, issued the following checks as part of the fraud scheme in which the LIMS contract was involved and to compensate CRIM employees and/or agents for having awarded the LIMS contract to the Consortium: (a) Check 6799 dated July 3, 1996, for $1,000 payable to Comitó Serra 96, to benefit Mr. Carlos Serra; (b) May, 1998, check 1873 for $500.00, issued on behalf of Comité Amigos de Carlos Serra. These facts were accepted by Mr. Carlos Serra in the Plea Agreement signed by him in U.S. v. Bernardo Negrón.

245. Habibe Computer Corp., also issued the following checks to benefit Mr. Carlos Serra: check 9798 of August 25, 1997 payable to PNP Corozal.

246. Habibe Computer Corp., granted three subcontracts to Aero-Metrics, Inc., for work in the LIMS project, eventhough Habibe Computer Corp.,

did not have any contract with CRIM for the LIMS project. As a matter of fact, another two contracts granted to Aero-Metrics, were granted by Entec Corp.

247. The referred to contracts in the preceding paragraph demonstrate that Habibe, Sr., and Habibe, Jr., used its diverse companies without overseeing corporate formalities and without respecting the independent corporate personalities.

**F. Habibe Enterprises, Inc.**

248. Habibe Enterprises, Inc., was incorporated on December 9, 1997.

249. The Annual Corporation Report for 1998 consigns that its' directors were Tommy R. Habibe (Sr.); Tommy O. Habibe (Jr.) and Frankie A. Habibe. Its' President was Tommy O. Habibe (Jr.), its' Secretary Tommy R. Habibe (Sr.), and its' Secretary Frankie A. Habibe.

250. The Annual Corporation Report for the year 1999 consigns Mr. Wilfredo Marrero as Director, President and Treasurer of Habibe Enterprises, Inc.

251. The Annual Report for the year 2000 consigns Mr. Wilfredo Marrero as Director and President of Habibe Enterprises, Inc.

**G. Woolpert Puerto Rico, Inc.**

252. In addition, Mr. Habibe (Sr.) made payments to CRIM employees and/or officers to compensate them for the granting and maintenance of the LIMS contract and for that purpose he used his diverse corporations, which were controlled by him and/or his son Mr. Tommy O. Habibe (Jr.). To those effects, on or about July 30, 1996 Mr. Tommy R. Habibe issued a check payable to Benjamin Wu for $50,000 using for that an account of Woolpert Puerto Rico, Inc.

253. Woolpert Puerto Rico, Inc., was incorporated in April of 1996 by Mr. Renán López de Azúa as the only incorporator. In or about July 9, 1995 Mr. Habibe (Sr.) acquired all the stocks of Woolpert P.R., Inc., from Mr. López de Azúa. Therefore, by July 30, 1996 Mr. Habibe (Sr.) controlled Woolpert Puerto Rico, Inc.

**H. Other Transactions Using Corporations Controlled by Habibe, Sr., and Habibe, Jr.**

254. Mr. Habibe, father, in the Plea and Cooperation Agreement signed by him in U.S. v. Bernardo Negrón, accepted in having made the following payments, among others: (a) check for $2,916.00 of Habibe Computer Corporation in the name of Servicentro Esso de Villalba to benefit Bernardo Negrón; (b) check from CEPI signed by Mr. Habibe, Sr., for $30,000 payable to Benjamín Wu; (c)

check from CEPI for $35,087.37 payable to Benjamín Wu, husband of Margarita Sanfeliz; (d) check from CEPI for $11,541.54 payable to Benjamín Wu; (e) check from CEPI for $22,489.57 payable to Benjamín Wu; (f) check from CEPI for $11,542.00 payable to Benjamín Wu; (g) check for $113,458.46 from CEPI payable to Benjamín Wu; (h) check for $10,500 from Habibe Computer Corporation, payable to Hispanic Elected Officials, organization presided by Bernardo Negrón; (i) check for $3,000 from Active Consulting, Inc., to benefit Eduardo Burgos; (j) check for $5,000 from Active Consulting, Inc., to benefit Eduardo Burgos.

**LEGAL PLEADINGS**

255. Mr. Tommy R. Habibe (Sr.), as stockholder of CEPI and Messrs. Tommy R. Habibe (Sr.) and Tommy O. Habibe (Jr.), as stockholders and

directors of Entec, are responsible to CRIM for being *alter egos* of Entec and CEPI.

256. To acknowledge the corporate existence of Entec and CEPI would promote fraud and injustice since Entec and CEPI do not have enough capital to respond to the CRIM for the damages sustained by this, due to the fraud perpetrated by the principals, directors, officers and stockholders of ENTEC and CEPI in relation to the LIMS contract.

257. To acknowledge the existence of HLRA and/or set it apart from Habibe, Sr., Habibe, Jr., John P. Stephens and Héctor L. Rivas would promote fraud and injustice, since said society does not have capital to respond to the CRIM for the here alleged damages.

258. Mr. Habibe, Sr., and his sons Habibe, Jr., and Frankie Habibe dominated and controlled Entec and CEPI and used them, together with their

other corporations Creative Consulting, Inc., previously known as Active Consulting, Inc., HCC, Woolpert Puerto Rico, Inc., currently known as Geotel, Inc., Habibe Enterprises and Habibe Computer Corp., currently known as Venture Technologies Corp., to make payments to officers and/or agents of the CRIM in exchange for them granting the LIMS contract, facilitate undue payments on invoices and in attempting that the CRIM would authorize an undue change order for $8 millions.

259. The corporations dominated by Messrs. Habibe, Sr., and Habibe, Jr., did not comply with the adequate corporation formalities. The late and defective filing of reports and taxes before the Department of State are highlighted, as well as inconsistencies in the accounting records.

260. As demonstrated by their own financial statements, Entec, CEPI and HLRA were not provided by its' stockholders of an adequate financial basis, to assume the responsibilities that the LIMS contract would impose and respond to the obligations that said contract and/or non-completion have generated.

261. To acknowledge the corporate existence of Entec and CEPI separate and distinctive from its' directors and stockholders would result in approving the evasion of these obligations by these companies to respond to the CRIM for the fraud perpetrated or propitiated with the LIMS contract, approve the fraud committed against the CRIM with LIMS project, and defeat the public policy that condemns corruption and allow the operation of corporate businesses with the purpose of defrauding the

government, since in this case the moneys' of Puerto Rico's taxpayers are involved.

262. The concentration of control on the persons of Tommy R. Habibe (Sr.) and Tommy O. Habibe (Jr.) led for Entec and CEPI to be used for illegitimate purposes, which was the perpetrated fraud in the LIMS contract. (DACO v. Alturas de Florida.)

263. In the alternative, Messrs. Habibe, Sr., Habibe, Jr., John P. Stephens and Héctor L. Rivas, its' respective spouses and their respective legal community of properties are jointly responsible to the CRIM of ENTECs' CEPI and/or HLRAs' responsibility for the damages sustained by the CRIM since its acts and/or personal omissions led Entec, CEPI and/or HLRA to participate, conspire and defraud the CRIM in the LIMS project.

264. On or about 1994 Entec Corp., established an office in Colombia.

265. The referred to office in the preceding paragraph may have been used to disguise and/or hide the money produced by fraud to the CRIM. For that, the assets, if any, of said office should respond to the CRIM for the alleged damages herewith sustained.

WHEREBY, very respectfully, it is requested from the Honorable Court that prior to the pertinent legal steps, please pronounce verdict accepting the lawsuit granting the requested remedies, as follows:

1. Ordering to cease the arbitration taking place in New York; and

2. Declaring null and inexistent ab initio the contract entitled "Agreement" granted on July 20, 1995 and ordering the devolution of benefits and payment for sustained damages by the CRIM; and

3. Declaring null and inexistent the arbitration clause included in section 22 of mentioned contract and ordering the immediate and permanent suspension of the arbitration proceedings; and

4. Condemn the defendants to the joint payment of sustained damages by the plaintiff CRIM, as alleged in the Lawsuit and in conformity with the evidence to be presented.

5. In the alternative, and if the agreement is not declared null, declaring that the Consortium should return to the CRIM the amount that the CRIM has paid the Consortium, plus interests and damages sustained by CRIM, and declaring inexistent the change order or, in the alternative, that this only amounts to $1.2 millions.

6. Awarding the requested cause of action under the Law Against Organized Crime and

condemning the defendants to the payment of triple damages that the law grants, attorneys' fees, fees and other expenses.

7. Uncovering the corporate veil between Habibe, Sr., Habibe, Jr., and the rest of its' directors and stockholders and its' corporations Entec, CEPI, Habibe Enterprises, Inc., Creative Consulting, Inc., previously known as Active Consulting, Inc., Habibe Computer Corp. (currently known as Venture Technologies Corp.), Geotel, Inc. (previously known as Woolpert Puerto Rico, Inc.), and all and whatever other corporations that had participated in the fraud to the CRIM with respect to the LIMS project and rejecting the personality, if any, of HLRA, and imposing responsibility to Habibe, Sr., Habibe, John P. Stephens Rexach and Héctor L. Rivas, their respective spouses and their legal community properties.

8. Dictating any other precaution that legally proceeds in favor of the plaintiff.

9. Imposing the defendants the payment of legal fees and litigation expenses and a sum no less than $1,000,000.00 in account of attorneys fees.

In San Juan, Puerto Rico, on November 24, 2004.

I CERTIFY: That on this same date I have notified exact and accurate copy of this motion to Atty. Miriam Y. Fernández González, Atty. Edgar Cartagena Santiago and/or Atty. Ramón E. Dapena, Goldman Antonetti & Córdova, P.S.C., P.O. Box 70364, San Juan, Puerto Rico 00936-8364; Atty. Félix A. Colón Miró, 80 Rodulfo González, Adjuntas, Puerto Rico 00601; Atty. José A. Maldonado Trinidad, P.O. Box 770, Corozal, Puerto Rico 00783; Atty. Osvaldo Carlo Linares and/or Atty. Lydia M. Ramos Cruz, Lausell & Carlo, P.S.C., American

Airlines Bldg., Penthouse, 1509 López Landrón, San Juan, Puerto Rico 00911; Atty. Francisco M. Dolz Sánchez, P.O. Box 361451, San Juan, Puerto Rico 00936-1451; Atty. Francisco Santiago Vela, P.O. Box 9024226, San Juan, Puerto Rico 00902-4226.

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Fax: 787-250-7545

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MARIA DEL CARMEN TABOAS
Member No. 7466

EXEMPT FROM SCHEDULE OF
NOTARY'S FEES OF ART. 19 OF
LAW NO. 80 OF AUGUST 30,
1991, AS AMENDED, 21
L.P.R.A 5818)
521311.1

**Bring Sealed Copy**

**COMMONWEALTH OF PUERTO RICO**
**FIRST INSTANCE COURT**
**SUPERIOUR COURT OF SAN JUAN**

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|---|---|
| CENTRO DE RECAUDACIONES DE IMPUESTOS MUNICIPALES<br><br>Plaintiff<br><br>v.<br><br>ENTEC CORPORATION, ET ALS.<br><br>Defendants | CIVIL NO.: KPE-01-2012(505)<br><br>RE:<br><br>DECLARATORY JUDGMENT, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, NULLITY OF CONTRACT, LAW AGAINST ORGANIZED CRIME, DAMAGES |

**ANSWER TO THE SECOND AMENDED COMPLAINT AND RECONVENTION**

TO THE HONORABLE COURT:

The APPEARING parties, ENTEC CORPORATION ("ENTEC"), CONSULTA ECONOMICA Y PLANIFICACION, INC. ("CEPI"), TOMMY R. HABIBE ARIAS ("Mr. Habibe Arias"), TOMMY O. HABIBE VARGAS ("Mr. Habibe Vargas") and ELSA MILAGROS BURGOS DE LEON, through his attorneys who subscribe, respectfully EXPOSE and REQUEST:

1. The allegations included in paragraph one (1) of the amended lawsuit are accepted.

2. The allegations included in paragraph two (2) of the amended lawsuit are accepted.

3. The allegations included in paragraph three (3) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

4. The allegations included in paragraph four (4) of the amended lawsuit are accepted. It is

affirmatively alleged that ENTEC provides consulting, training and implementation services, among others.

5. The allegations included in paragraph five (5) of amended lawsuit are denied.

6. The allegations included in paragraph six (6) of amended lawsuit are accepted. It is alleged that Mr. Tommy R. Habibe Arias is also owner of ENTEC.

7. The allegations included in paragraph seven (7) of amended lawsuit as written are denied. It is affirmatively alleged that Mr. Tommy R. Habibe Arias and Mr. Tommy O. Habibe Vargas are owners of ENTEC; that Mr. Tommy R. Habibe Arias and Mr. Tommy O. Habibe Vargas acquired CEPI after the death of its' original owner, Mr. Nelson Soto; that Mr. Tommy R. Habibe Arias, Mr. Tommy O. Habibe Vargas are not absolute owners of Woolpert of Puerto

Rico, Inc., since a minority owner exists; that Engineering Technologies is not an entity; that Mr. Tommy R. Habibe Arias is owner of Active Consulting, Inc.

8. The allegations included in paragraph eight (8) of the amended lawsuit are accepted.

9. The allegations included in paragraph nine (9) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied due to lack of information or belief.

10. The allegations included in paragraph ten (10) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied by lack of information or belief.

11. The allegations included in paragraph eleven (11) of amended lawsuit as written are denied. It is affirmatively alleged that ENTEC undertook certain administrative obligations of HLRA.

12. The allegations included in paragraph twelve (12) of the amended lawsuit regarding that Mr. Eduardo Burgos signed the contract entitled "Agreement" are denied. It is affirmatively alleged that the CRIM, as ordered by its' Governing Board and through its' Executive Director, Eduardo Burgos, and the Consortium composed of ENTEC, CEPI and HLRA signed said agreement. The rest of the allegations are accepted.

13. The allegations included in paragraph thirteen (13) of the amended lawsuit are accepted. It is affirmatively alleged that such allegation disputes the current Civil Procedures Rules and the current Rules of Evidence.

14. The allegations included in paragraph fourteen (14) of the amended lawsuit are denied. It is affirmatively alleged that such allegation disputes

the current Civil Procedures Rules and the current Rules of Evidence.

15. The allegations included in paragraph fifteen (15) of the amended lawsuit are accepted.

16. The allegations included in paragraph sixteen (16) of the amended lawsuit are denied by lack of information or belief. It is affirmatively alleged that such allegation disputes the current Civil Procedures Rules and the current Rules of Evidence.

17. The allegations included in paragraph seventeen (17) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

18. The allegations included in paragraph eighteen (18) of the amended lawsuit are not addressed to the persons appearing in court. In the

alternative, they are denied for lack of information or belief.

19. The allegations included in paragraph nineteen (19) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

20. The allegations included in paragraph twenty (20) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

21. The allegations included in paragraph twenty-one (21) of the amended lawsuit are accepted.

22. The allegations included in paragraph twenty-two (22) of the amended lawsuit are not addressed to the persons appearing in court. In the

alternative, they are denied for lack of information or belief.

23. The allegations included in paragraph twenty-three (23) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

24. The allegations included in paragraph twenty-four (24) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

25. The allegations included in paragraph twenty-five (25) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

26. The allegations included in paragraph twenty-six (26) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

27. The allegations included in paragraph twenty-seven (27) of the amended lawsuit are denied.

28. The allegations included in paragraph twenty-eight (28) of the amended lawsuit are denied.

29. The allegations included in paragraph twenty-nine (29) of the amended lawsuit are denied as written.

30. The allegations included in paragraph thirty (30) of the amended lawsuit are accepted.

31. The allegations included in paragraph thirty-one (31) of the amended lawsuit are denied as written.

32. The allegations included in paragraph thirty-two (32) of the amended lawsuit are denied as written.

33. The allegations included in paragraph thirty-three (33) of the amended lawsuit are denied as written.

34. The allegations included in paragraph thirty-four (34) of the amended lawsuit are denied for lack of information or belief.

35. The allegations included in paragraph thirty-five (35) of the amended lawsuit are denied as written. It is affirmatively alleged that the CRIM was the one to notify the Consortium, on or about April 4, 1995, that it was chosen to proceed to the next phase of the evaluation process for the LIMS project.

36. The allegations included in paragraph thirty-six (36) of the amended lawsuit are denied as

written. It is affirmatively alleged that the CRIM sent a letter to the Consortium requesting a "Price Proposal and Explanation of Cost".

37. The allegations included in paragraph thirty-seven (37) of the amended lawsuit are denied for lack of information or belief.

38. The allegations included in paragraph thirty-eight (38) of the amended lawsuit are denied as written.

39. The allegations included in paragraph thirty-nine (39) of the amended lawsuit are denied for lack of information or belief.

40. The allegations included in paragraph forty (40) of the amended lawsuit are denied for lack of information or belief. It is affirmatively alleged that CRIMs' operations are run under the guidelines of the Governing Board.

41. The allegations included in paragraph forty-one (41) of the amended lawsuit are denied.

42. The allegations included in paragraph forty-two (42) of the amended lawsuit are denied. It is affirmatively alleged that CRIM, on orders of its' Governing Board and through its' Executive Director, Eduardo Burgos, and the consortium composed of ENTEC, CEPI, and HLRA signed said agreement.

43. The allegations included in paragraph forty-three (43) of the amended lawsuit are denied as written.

44. The allegations included in paragraph forty-four (44) of the amended lawsuit are denied.

45. The allegations included in paragraph forty-five (45) of the amended lawsuit are denied.

46. The allegations included in paragraph forty-six (46) of the amended lawsuit do not need a responsive allegation. It is affirmatively alleged that

the document entitled "Indictment", attached to the amended lawsuit, speaks for itself.

47. The allegations included in paragraph forty-seven (47) of the amended lawsuit do not need a responsive allegation. It is affirmatively alleged that the document

entitled "Indictment", attached to the amended lawsuit, speaks for itself.

48. The allegations included in paragraph forty-eight (48) of the amended lawsuit are denied as written.

49. The allegations included in paragraph forty-nine (49) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

50. The allegations included in paragraph fifty (50) of the amended lawsuit are denied. It is

affirmatively alleged that the Transciption of "Change of Plea Hearing" speaks for itself.

51. The allegations included in paragraph fifty-one (51) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

52. The allegations included in paragraph fifty-two (52) of the amended lawsuit are denied as written.

53. The allegations included in paragraph fifty-three (53) of the amended lawsuit are denied as written.

54. The allegations included in paragraph fifty-four (54) of the amended lawsuit are denied as written.

55. The allegations included in paragraph fifty-five (55) of the amended lawsuit are denied as written.

56. The allegations included in paragraph fifty-six (56) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

57. The allegations included in paragraph fifty-seven (57) of the amended lawsuit are not addressed to the persons appearing in court.

58. The allegations included in paragraph fifty-eight (58) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

59. The allegations included in paragraph fifty-nine (59) of the amended lawsuit are not addressed to the persons appearing in court.

60. The allegations included in paragraph sixty (60) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

61. The allegations included in paragraph sixty-one (61) of the amended lawsuit are denied as written.

62. The allegations included in paragraph sixty-two (62) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

63 The allegations included in paragraph sixty-three (63) of the amended lawsuit are denied as written.

64. The allegations included in paragraph sixty-four (64) of the amended lawsuit are denied as written.

65. The allegations included in paragraph sixty-five (65) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

66. The allegations included in paragraph sixty-six (66) of the amended lawsuit are denied as written.

67. The allegations included in paragraph sixty-seven (67) of the amended lawsuit are denied as written.

68. The allegations included in paragraph sixty-eight (68) of the amended lawsuit are denied as written.

69. The allegations included in paragraph sixty-nine (69) of the amended lawsuit are denied as written.

70. The allegations included in paragraph seventy (70) of the amended lawsuit are not addressed to the persons appearing in court.

71. The allegations included in paragraph seventy-one (71) of the amended lawsuit are not

addressed to the persons appearing in court. In the alternative, they are denied as written.

72. The allegations included in paragraph seventy-two (72) of the amended lawsuit are not addressed to the persons appearing in court.

73. The allegations included in paragraph seventy-three (73) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

74. The allegations included in paragraph seventy-four (74) of the amended lawsuit are denied as written.

75. The allegations included in paragraph seventy-five (75) of the amended lawsuit are not addressed to the persons appearing in court.

76. The allegations included in paragraph seventy-six (76) of the amended lawsuit are not

addressed to the persons appearing in court. In the alternative, they are denied as written.

77. The allegations included in paragraph seventy-seven (77) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

78. The allegations included in paragraph seventy-eight (78) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

79. The allegations included in paragraph seventy-nine (79) of the amended lawsuit are accepted.

80. The allegations included in paragraph eighty (80) of the amended lawsuit are accepted.

81. The allegations included in paragraph eighty-one (81) of the amended lawsuit are accepted.

82. The allegations included in paragraph eighty-two (82) of the amended lawsuit are denied as written.

83. The allegations included in paragraph eighty-three (83) of the amended lawsuit are denied.

84. The allegations included in paragraph eighty-four (84) of the amended lawsuit are accepted.

85. The allegations included in paragraph eighty-five (85) of the amended lawsuit are accepted.

86. The allegations included in paragraph eighty-six (86) of the amended lawsuit are accepted.

87. The allegations included in paragraph eighty-seven (87) of the amended lawsuit are accepted.

88. The allegations included in paragraph eighty-eight (88) of the amended lawsuit are denied.

89. The allegations included in paragraph eighty-nine (89) of the amended lawsuit are accepted.

90. The allegations included in paragraph ninety (90) of the amended lawsuit are denied.

91. The allegations included in paragraph ninety-one (91) of the amended lawsuit are denied.

92. The allegations included in paragraph ninety-two (92) of the amended lawsuit are accepted.

93. The allegations included in paragraph ninety-three (93) of the amended lawsuit are accepted.

94. The allegations included in paragraph ninety-four (94) of the amended lawsuit are accepted. It is affirmatively alleged that the CRIM has refused to pay the AAA the requested amount, therefore delaying the procedures. It is also alleged that the persons appearing in court will pay the requested amount to the CRIM.

95. The allegations included in paragraph ninety-five (95) of the amended lawsuit are accepted.

96. The allegations included in paragraph ninety-six (96) of the amended lawsuit are accepted.

97. The allegations included in paragraph ninety-seven (97) of the amended lawsuit are accepted.

98. The allegations included in paragraph ninety-eight (98) of the amended lawsuit are accepted.

99. The allegations included in paragraph ninety-nine (99) of the amended lawsuit are denied as written. It is affirmatively alleged that the arbitration schedule was modified and extended.

100. Paragraph one hundred (100) of the amended lawsuit does not need a responsive allegation. In the alternative, it is denied inasmuch it may include legal conclusions. It is affirmatively alleged that Law No. 80 of August 30, 1991, 21 L.P.R.A., 5801 et seq., speaks for itself.

101. Paragraph one hundred one (101) of the amended lawsuit does not need a responsive allegation. In the alternative, it is denied inasmuch it may include legal conclusions. It is affirmatively alleged that Law No. 80 of August 30, 1991, 21 L.P.R.A., 5801 et. seq., speaks for itself.

102. Paragraph one hundred two (102) of the amended lawsuit does not need a responsive allegation. In the alternative, it is denied inasmuch it may include legal conclusions. It is affirmatively alleged that Law No. 80 of August 30, 1991, 21 L.P.R.A., 5801 et. seq., speaks for itself.

103. Paragraph one hundred three (103) of the amended lawsuit does not need a responsive allegation. In the alternative, it is denied inasmuch it may include legal conclusions. It is affirmatively alleged that Law No. 80 of August 30, 1991, 21 L.P.R.A., 5801 et. seq., speaks for itself.

104. The allegations included in paragraph one hundred four (104) of the amended lawsuit are accepted. It is affirmatively alleged that Law No. 80 of August 30, 1991, 21 L.P.R.A., 5801 et. seq., speaks for itself.

105. Paragraph one hundred five (105) of the amended lawsuit does not need a responsive allegation. In the alternative, it is denied inasmuch it may include legal conclusions. It is affirmatively alleged that Law No. 80 of August 30, 1991, 21 L.P.R.A., 5801 et. seq., speaks for itself.

106. The allegations included in paragraph one hundred six (106) of the amended lawsuit are denied for lack of information or belief. In the alternative, it is denied inasmuch it may include legal conclusions.

107. The allegations included in paragraph one hundred seven (107) of the amended lawsuit are denied for lack of information or belief.

108. The allegations included in paragraph one hundred eight (108) of the amended lawsuit are denied for lack of information or belief.

109. The allegations included in paragraph one hundred nine (109) of the amended lawsuit are denied for lack of information or belief.

110. The allegations included in paragraph one hundred ten (110) of the amended lawsuit are denied for lack of information or belief. In the alternative, it is denied inasmuch it may include legal conclusions.

111. The allegations included in paragraph one hundred eleven (111) of the amended lawsuit are denied.

112. The allegations included in paragraph one hundred twelve (112) of the amended lawsuit are denied as written.

113. The allegations included in paragraph one hundred thirteen (113) of the amended lawsuit are denied as written. It is affirmatively alleged, as stated in paragraph seventy-five (75) of the amended lawsuit, that CRIM "has the duty of keeping up to date the land registry for real estate property of each municipality".

114. The allegations included in paragraph one hundred fourteen (114) of the amended lawsuit are denied.

115. The allegations included in paragraph one hundred fifteen (115) of the amended lawsuit are denied.

116. The allegations included in paragraph one hundred sixteen (116) of the amended lawsuit are denied.

117. The answers to the allegations included in paragraphs one (1) thru one hundred sixteen (116) are repeated. If no allegation is answered, it will be understood to be denied.

118. The allegations included in paragraph one hundred eighteen (118) of the amended lawsuit are denied.

119. The allegations included in paragraph one hundred nineteen (119) of the amended lawsuit are denied.

120. The allegations included in paragraph one hundred twenty (120) of the amended lawsuit are denied.

121. The allegations included in paragraph one hundred twenty-one (121) of the amended lawsuit are denied.

122. The allegations included in paragraph one hundred twenty-two (122) of the amended lawsuit are denied.

123. The allegations included in paragraph one hundred twenty-three (123) of the amended lawsuit are denied.

124. The allegations included in paragraph one hundred twenty-four (124) of the amended lawsuit are denied.

125. The answers to the allegations included in paragraphs one (1) thru one hundred twenty-four (124) are repeated. If no allegation is answered, it will be understood to be denied.

126. The allegations included in paragraph one hundred twenty-six (126) of the amended lawsuit are accepted.

127. The allegations included in paragraph one hundred twenty-seven (127) of the amended lawsuit are denied as written. It is affirmatively alleged that the subscribed contract between the parties speaks for itself.

128. The allegations included in paragraph one hundred twenty-eight (128) of the amended lawsuit are denied.

129. The allegations included in paragraph one hundred twenty-nine (129) of the amended lawsuit are denied.

130. The allegations included in paragraph one hundred thirty (130) of the amended lawsuit are denied.

131. The answers to the allegations included in paragraphs one (1) thru one hundred thirty (130) are repeated. If no allegation is answered, it will be understood to be denied.

132. The allegations included in paragraph one hundred thirty-two (132) of the amended lawsuit are accepted.

133. The allegations included in paragraph one hundred thirty-three (133) of the amended lawsuit are denied.

134. The allegations included in paragraph one hundred thirty-four (134) of the amended lawsuit are denied.

135. The answers to the allegations included in paragraphs one (1) thru one hundred thirty-four (134) are repeated. If no allegation is answered, it will be understood to be denied.

136. The allegations included in paragraph one hundred thirty-six (136) of the amended lawsuit are denied.

137. The allegations included in paragraph one hundred thirty-seven (137) of the amended lawsuit are denied.

138. The allegations included in paragraph one hundred thirty-eight (138) of the amended lawsuit are denied.

139. The allegations included in paragraph one hundred thirty-nine (139) of the amended lawsuit are denied.

140. The allegations included in paragraph one hundred forty (140) of the amended lawsuit are denied.

141. The allegations included in paragraph one hundred forty-one (141) of the amended lawsuit are denied.

142. The allegations included in paragraph one hundred forty-two (142) of the amended lawsuit are denied.

143. The answers to the allegations included in paragraphs one (1) thru one hundred forty-two (142) are repeated. If no allegation is answered, it will be understood to be denied.

144. The allegations included in paragraph one hundred forty-four (144) of the amended lawsuit are denied.

145. The allegations included in paragraph one hundred forty-five (145) of the amended lawsuit are denied.

146. The allegations included in paragraph one hundred forty-six (146) of the amended lawsuit are denied.

147. The allegations included in paragraph one hundred forty-seven (147) of the amended lawsuit are denied.

148. The allegations included in paragraph one hundred forty-eight (148) of the amended lawsuit are denied.

149. The allegations included in paragraph one hundred forty-nine (149) of the amended lawsuit are denied.

150. The allegations included in paragraph one hundred fifty (150) of the amended lawsuit are denied. It is affirmatively alleged that the Consortium presented an alternative for the implementation of the LIMS project.

151. The allegations included in paragraph one hundred fifty-one (151) of the amended lawsuit are denied.

152. The allegations included in paragraph one hundred fifty-two (152) of the amended lawsuit are denied.

153. The answers to the allegations included in paragraphs one (1) thru one hundred fifty-two (152) are repeated. If no allegation is answered, it will be understood to be denied.

154. The allegations included in paragraph one hundred fifty-four (154) of the amended lawsuit are denied.

155. The answers to the allegations included in paragraphs one (1) thru one hundred fifty-four (154) are repeated. If no allegation is answered, it will be understood to be denied.

156. Paragraph one hundred fifty-six (156) of the amended lawsuit does not need a responsive allegation. In the alternative, it is denied inasmuch

it may include legal conclusions. It is affirmatively alleged that the law speaks for itself.

157. The allegations included in paragraph one hundred fifty-seven (157) of the amended lawsuit are denied.

158. Paragraph one hundred fifty-eight (158) of the amended lawsuit does not need a responsive allegation. In the alternative, it is denied inasmuch it may include legal conclusions. It is affirmatively alleged that the law speaks for itself.

159. Paragraph one hundred fifty-nine (159) of the amended lawsuit does not need a responsive allegation. In the alternative, it is denied inasmuch it may include legal conclusions. It is affirmatively alleged that the law speaks for itself.

160. Paragraph one hundred sixty (160) of the amended lawsuit does not need a responsive allegation. In the alternative, it is denied inasmuch

it may include legal conclusions. It is affirmatively alleged that the law speaks for itself.

161. Paragraph one hundred sixty-one (161) of the amended lawsuit does not need a responsive allegation. In the alternative, it is denied inasmuch it may include legal conclusions. It is affirmatively alleged that the law speaks for itself.

162. The allegations included in paragraph one hundred sixty-two (162) of the amended lawsuit are denied.

163. The allegations included in paragraph one hundred sixty-three (163) of the amended lawsuit are denied.

164. The allegations included in paragraph one hundred sixty-four (164) of the amended lawsuit are denied.

165. The allegations included in paragraph one hundred sixty-five (165) of the amended lawsuit are denied.

166. The allegations included in paragraph one hundred sixty-six (166) of the amended lawsuit are denied.

167. The allegations included in paragraph one hundred sixty-seven (167) of the amended lawsuit are denied.

168. The allegations included in paragraph one hundred sixty-eight (168) of the amended lawsuit are denied.

169. The allegations included in paragraph one hundred sixty-nine (169) of the amended lawsuit are denied.

170. The answers to the allegations included in paragraphs one (1) thru one hundred sixty-nine

(169) are repeated. If no allegation is answered, it will be understood to be denied.

171. The allegations included in paragraph one hundred seventy-one (171) of the amended lawsuit are denied as written. The Certificate of Incorporation of Entec Corporation speaks for itself.

172. The allegations included in paragraph one hundred seventy-two (172) of the amended lawsuit are accepted.

173. The allegations included in paragraph one hundred seventy-three (173) of the amended lawsuit are denied.

174. The allegations included in paragraph one hundred seventy-four (174) of the amended lawsuit are accepted.

175. The allegations included in paragraph one hundred seventy-five (175) of the amended

lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

176. The allegations included in paragraph one hundred seventy-six (176) of the amended lawsuit are accepted.

177. The allegations included in paragraph one hundred seventy-seven (177) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

178. It is denied that Mr. Wilfredo Marrero be an employee of any party in this litigation. It is accepted that in the past Mr. Marero was an employee.

179. The allegations included in paragraph one hundred seventy-nine (179) of the amended lawsuit are denied as written.

180. The allegations included in paragraph one hundred eighty (180) of the amended lawsuit are denied as written.

181. The allegations included in paragraph one hundred eighty-one (181) of the amended lawsuit are denied as written.

182. The allegations included in paragraph one hundred eighty-two (182) of the amended lawsuit are denied as written.

183. The allegations included in paragraph one hundred eighty-three (183) of the amended lawsuit are denied as written.

184. The allegations included in paragraph one hundred eighty-four (184) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

185. The allegations included in paragraph one hundred eighty-five (185) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

186. The allegations included in paragraph one hundred eighty-six (186) of the amended lawsuit are not addressed to the persons appearing in court.

187. The allegations included in paragraph one hundred eighty-seven (187) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

188. The allegations included in paragraph one hundred eighty-eight (188) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

189. The allegations included in paragraph one hundred eighty-nine (189) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

190. The allegations included in paragraph one hundred ninety (190) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

191. The allegations included in paragraph one hundred ninety-one (191) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

192. The allegations included in paragraph one hundred ninety-two (192) of the amended lawsuit are not addressed to the persons appearing in court.

In the alternative, they are denied for lack of information or belief.

193. The allegations included in paragraph one hundred ninety-three (193) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

194. The allegations included in paragraph one hundred ninety-four (194) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

195. The allegations included in paragraph one hundred ninety-five (195) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

196. The allegations included in paragraph one hundred ninety-six (196) of the amended lawsuit

are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

197. The allegations included in paragraph one hundred ninety-seven (197) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

198. The allegations included in paragraph one hundred ninety-eight (198) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied for lack of information or belief.

199. The allegations included in paragraph one hundred ninety-nine (199) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

200. The allegations included in paragraph two hundred (200) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

201. The allegations included in paragraph two hundred one (201) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

202. The allegations included in paragraph two hundred two (202) of the amended lawsuit are not addressed to the persons appearing in court. In the alternative, they are denied as written.

203. The allegations included in paragraph two hundred three (203) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

204. The allegations included in paragraph two hundred four (204) of the amended lawsuit are denied as written.

205. The allegations included in paragraph two hundred five (205) of the amended lawsuit are denied.

206. The allegations included in paragraph two hundred six (206) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

207. The allegations included in paragraph two hundred seven (207) of the amended lawsuit are denied for lack of information or belief.

208. The allegations included in paragraph two hundred eight (208) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

209. The allegations included in paragraph two hundred nine (209) of the amended lawsuit are denied for lack of information or belief.

210. The allegations included in paragraph two hundred ten (210) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

211. The allegations included in paragraph two hundred eleven (211) of the amended lawsuit are denied for lack of information or belief.

212. The allegations included in paragraph two hundred twelve (212) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

213. The allegations included in paragraph two hundred thirteen (213) of the amended lawsuit are denied for lack of information or belief.

214. The allegations included in paragraph two hundred fourteen (214) of the amended lawsuit are denied for lack of information or belief.

215. The allegations included in paragraph two hundred fifteen (215) of the amended lawsuit are denied for lack of information or belief.

216. The allegations included in paragraph two hundred sixteen (216) of the amended lawsuit are denied for lack of information or belief.

217. The allegations included in paragraph two hundred seventeen (217) of the amended lawsuit are denied for lack of information or belief.

218. The allegations included in paragraph two hundred eighteen (218) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

219. The allegations included in paragraph two hundred nineteen (219) of the amended lawsuit are denied for lack of information or belief.

220. The allegations included in paragraph two hundred twenty (220) of the amended lawsuit are denied for lack of information or belief.

221. The allegations included in paragraph two hundred twenty-one (221) of the amended lawsuit are denied for lack of information or belief.

222. The allegations included in paragraph two hundred twenty-two (222) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

223. The allegations included in paragraph two hundred twenty-three (223) of the amended lawsuit are denied for lack of information or belief.

224. The allegations included in paragraph two hundred twenty-four (224) of the amended lawsuit are denied for lack of information or belief.

225. The allegations included in paragraph two hundred twenty-five (225) of the amended lawsuit are denied for lack of information or belief.

226. The allegations included in paragraph two hundred twenty-six (226) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

227. The allegations included in paragraph two hundred twenty-seven (227) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

228. The allegations included in paragraph two hundred twenty-eight (228) of the amended lawsuit are denied as written.

229. The allegations included in paragraph two hundred twenty-nine (229) of the amended lawsuit are denied as written.

230. The allegations included in paragraph two hundred thirty (230) of the amended lawsuit are denied for lack of information or belief.

231. The allegations included in paragraph two hundred thirty-one (231) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

232. The allegations included in paragraph two hundred thirty-two (232) of the amended lawsuit are denied as written.

233. The allegations included in paragraph two hundred thirty-three (233) of the amended lawsuit are denied.

234. The allegations included in paragraph two hundred thirty-four (234) of the amended lawsuit are denied.

235. The allegations included in paragraph two hundred thirty-five (235) of the amended lawsuit are denied.

236. The allegations included in paragraph two hundred thirty-six (236) of the amended lawsuit are denied.

237. The allegations included in paragraph two hundred thirty-seven (237) of the amended lawsuit are denied.

238. The allegations included in paragraph two hundred thirty-eight (238) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

239. The allegations included in paragraph two hundred thirty-nine (239) of the amended

lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

240. The allegations included in paragraph two hundred forty (240) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

241. The allegations included in paragraph two hundred forty-one (241) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

242. The allegations included in paragraph two hundred forty-two (242) of the amended lawsuit are denied.

243. The allegations included in paragraph two hundred forty-three (243) of the amended lawsuit are denied.

244. The allegations included in paragraph two hundred forty-four (244) of the amended lawsuit are denied.

245. The allegations included in paragraph two hundred forty-five (245) of the amended lawsuit are denied.

246. The allegations included in paragraph two hundred forty-six (246) of the amended lawsuit are denied as written.

247. The allegations included in paragraph two hundred forty-seven (247) of the amended lawsuit are denied.

248. The allegations included in paragraph two hundred forty-eight (248) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

249. The allegations included in paragraph two hundred forty-nine (249) of the amended lawsuit

are accepted subject to their being consistent with the documents to which it makes reference to.

250. The allegations included in paragraph two hundred fifty (250) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

251. The allegations included in paragraph two hundred fifty-one (251) of the amended lawsuit are accepted subject to their being consistent with the documents to which it makes reference to.

252. The allegations included in paragraph two hundred fifty-two (252) of the amended lawsuit are denied.

253. The allegations included in paragraph two hundred fifty-three (253) of the amended lawsuit are denied.

254. The allegations included in paragraph two hundred fifty-four (254) of the amended lawsuit are denied.

255. The allegations included in paragraph two hundred fifty-five (245) of the amended lawsuit are denied.

256. The allegations included in paragraph two hundred fifty-six (256) of the amended lawsuit are denied.

257. The allegations included in paragraph two hundred fifty-seven (257) of the amended lawsuit are denied.

258. The allegations included in paragraph two hundred fifty-eight (258) of the amended lawsuit are denied.

259. The allegations included in paragraph two hundred fifty-nine (259) of the amended lawsuit are denied.

260. The allegations included in paragraph two hundred sixty (260) of the amended lawsuit are denied.

261. The allegations included in paragraph two hundred sixty-one (261) of the amended lawsuit are denied.

262. The allegations included in paragraph two hundred sixty-two (262) of the amended lawsuit are denied.

263. The allegations included in paragraph two hundred sixty-three (263) of the amended lawsuit are denied.

264. The allegations included in paragraph two hundred sixty-four (264) of the amended lawsuit are denied.

265. The allegations included in paragraph two hundred sixty-five (265) of the amended lawsuit are denied.

266. All those affirmations in the allegations of the amended lawsuit that have not been specifically accepted, are denied.

## AFFIRMATIVE DEFENSES

1. The amended lawsuit ceases to expose facts that are essential in the cause of action to justify any remedy.

2. The plaintiff cannot go against its' own acts.

3. The plaintiff agreed to solve its disputes with the persons appearing in court through an arbitration procedure before the American Arbitration Association.

4. The plaintiff resigned from the interposed defenses against arbitration.

5. Plaintiff has actively participated in the arbitration procedure before the American

Arbitration Association raising affirmative defenses and making discoveries, among other things.

6. The doctrine of negligence prevents the plaintiff from requesting this procedure and/or prevail in this amended lawsuit.

7. Plaintiff is subject to arbitration by means of a contract and thereby, disabled by contract to request this procedure and/or proceed or prevail in this amended lawsuit.

8. The doctrine of voluntary acts prevents the plaintiff to reject to, or refuse to participate in an arbitration procedure and/or proceed or prevail in this amended lawsuit.

9. Plaintiff resigned to initiate any cause of action, under the contract between the parties, before this or any other court.

10. Plaintiff does not have "clean hands" or integrity.

11. Plaintiff has been negligent regarding its' obligations under the contract object of this legal action.

12. Plaintiff has demonstrated a lack of diligence in presenting the allegations that now it presents.

13. All the members of the Governing Board of the CRIM have not been included at the time of the alleged facts in the amended lawsuit, therefore indispensable issues are missing.

14. The LIMS contract was approved by all members of the Governing Board of the CRIM.

15. The lawsuit has prescribed.

16. Those appearing in court have complied with the contract subscribe between the Consortium and the CRIM.

17. The damages claimed by the plaintiff, if any, are ungrounded, disproportionate, unreasonable

and excessive when comparing with the damages that they might have sustained as consequence of the alleged facts.

18. The claimed damages by the plaintiff have no relative cause with any act of those appearing in court.

19. The affirmative defenses of the other codefendants are adopted by reference in so far as they do not disagree with the position of the co-defendants appearing in court.

20. Plaintiff reserves the right to amend the present answer, add additional defenses and hold any issue of law which may be applicable during the dispute of this litigation, of meriting such amendment as a result of investigation, discovery or additional information.

## RECONVENTION

21. On July 20, 1995, the Centro de Recaudación de Ingresos Municipales ("CRIM") and the Consortium integrated by ENTEC, CEPI and Héctor Luis Rivas y Asociados (the "Consortium"), subscribed an agreement (the "Agreement") by which the Consortium would be in charge of the design, development, installation and implementation of a digitalized land registry system known as "Land Information Management Systems ("LIMS").

22. The original price for the work performed, understood as equipment, materials and services, was stipulated in $56,042,352.00; amount the CRIM would pay upon completion of the different phases of the project. See Section 19.1 of the Agreement, page 15.

23. CRIM has unfulfilled its' obligations according to the Agreement.

## I. First Cause of Action

### Collection of Money

24. CRIM unfulfilled the contract and owes $??,220,468.09 to ENTEC and CEPI for services rendered during the months of January 19?? thru March 2000. The corresponding invoices and collection letters were submitted to CRIM according to the Agreement.

25. The amount disposed in the previous paragraph is due, liquid and demandable.

26. CRIM also owes interests on delays over the amount disposed of in paragraph five (5).

27. The defendants, ENTEC and CEPI, have made unsuccessful efforts to collect money.

## II. Second Cause of Action

### Collection of Money

28. CRIM owes $1,865,807.05 to ENTEC for maintenance services and products related to

equipment, materials and components of the LIMS project. Said amount corresponds to submitted invoices since December 1996 to December 2000.

29. The amount disposed in the preceding paragraph is due, liquid and demandable.

30. CRIM also owes interests on delays over the amount disposed in paragraph eight (8)..

31. Co-defendant, ENTEC, has made unsuccessful collections efforts.

**III. Third Cause of Action**

**Collection of Money**

32. The CRIM also owes, $6,689,473.00 to ENTEC and CEPI for changes to the specifications of the LIMS project. The changes include changes to the cartography and photography scales, additional equipment destined to the connection of the regional offices of the CRIM, improvements to existing equipment and the corresponding support services.

33. Amount disposed in the preceding paragraph is due, liquid and demandable.

34. CRIM owes also interests on delays over the amount disposed in paragraph twelve (12).

35. The defendants, ENTEC and CEPI, have made unsuccessful collection efforts.

## IV. Fourth Cause of Action

## Damages

36. The failure of the CRIM to comply has caused damages to the defendants for the loss of income and loss of business opportunities. The damages are estimated in an amount not less than $5,000,000.00.

## V. Fifth Cause of Action

## Damages

37. CRIM libeled the defending corporations, ENTEC and CEPI, when it publicly disseminated that: (1) the LIMS contract was

subscribed as a result of a conspiracy to perpetrate fraud, and (2) the contracted work was not performed.

38. The referred imputation by CRIM has damaged the commercial reputation of ENTEC and CEPI.

39. The defamatory acts of CRIM have caused damages to the co-defending corporations in an amount not less than $5,000,000.00.

## VI. Sixth Cause of Action

## Damages

40. CRIM slandered the co-defendant Habibe Vargas with the imputation that: (1) he actively participated in writing the Request for Proposal, that would be used in the bids for the CRIM project, to assure that ENTEC and CEPI would comply with all the requirements.

41. The imputations by CRIM have damaged the personal, professional and commercial reputation of Mr. Habibe Vargas.

42. The defamatory acts of the CRIM have caused damages to the co-defendant in an amount not less than $5,000,000.00.

WHEREAS, it is requested from the Honorable Court to overrule the amended lawsuit and accept the reconvention and condemn the plaintiff to pay the defendants for the requested damages, interests, attorneys fees, expenses and court fees.

In San Juan, Puerto Rico, on December 15, 2004.

I CERTIFY: To having sent accurate and exact copy of the present motion by regular mail to the following: Atty. Francisco Dolz Sánchez, PO Box 361451, San Juan, Puerto Rico 00936-4151; Atty.

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MYRIAM FERNÁNDEZ GONZALEZ
Member No.

**IN THE SUPREME COURT OF PUERTO RICO**

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| CENTRO DE RECAUDACION DE INGRESOS MUNICIPALES ("CRIM")<br><br>Plaintiff - Appellee<br><br>v.<br><br>ENTEC CORPORATION, CONSULTA ECONOMICA Y PLANIFICACIÓN, INC.; BY ITSELF AND IN REPRESENTATION OF HÉCTOR LUIS RIVAS Y ASOCIADOS IN THE LIMS CONTRACT, HÉCTOR LUIS RIVAS & ASSOCIATES; TOMMY HABIBE VARGAS, HIS WIFE MRS. DE HABIBE VARGAS AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; HÉCTOR L. RIVAS COLON, HIS WIFE MRS. RIVAS COLON & THE LEGAL | CASE NO. T.S.:<br><br>CASE NO T.A.: KLAN-2007-01242<br><br>CASE NO. T.P.I.: KPE 01-2012 (603)<br><br>RE: APPEAL OF JUDGMENT ISSUED BY THE COURT OF APPEALS, JURIDICAL REGION OF SAN JUAN, IN THE CASE IN THE HEADING KLAN-2007-01242, REGARDING ARBITRATION, NULLITY OF CONTRACT, LAW AGAINST ORGANIZED CRIME, DAMAGES |

COMMUNITY OF PROPERTIES OF BOTH; JOHN PAUL STEPHENS REXACH, HIS WIFE MRS STEPHENS REXACH AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; EDUARDO BURGOS NEGRÓN AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; CÁNDIDA RODRIGUEZ LARRENDOWTTE, HER HUSBAND MR. "A" AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; WANDA RODRIGUEZ HERNÁNDEZ HER HUSBAND MR. "B" AND THEIR LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; BERNARDO NEGRÓN MONTALVO, HIS WIFE MRS. NEGRÓN MONTALVO

AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; CARLOS SERRA VELEZ, HIS WIFE MRS. SERRA VELEZ AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM; MARGARITA SANFELIZ WU, HER HUSBAND BENJAMIN WU AND THE LEGAL COMMUNITY OF PROPERTIES COMPOSED BETWEEN THEM.

Defendants – Appellants

**APPEAL**

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Mrs. De Habibe Vargas; and
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**IN THE SUPREME COURT OF PUERTO RICO**

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| CENTRO DE RECAUDACION DE INGRESOS MUNICIPALES ("CRIM")<br><br>Plaintiff - Appellee<br><br>v.<br><br>ENTEC CORPORATION, CONSULTA ECONOMICA Y PLANIFICACIÓN, INC.; HÉCTOR LUIS RIVAS Y ASOCIADOS, et al.<br><br>Defendants – Appellant | CASE NO. T.S.:<br><br>CASE NO T.A.: KLAN-2007-01242<br><br>CASE NO. T.P.I.: KPE 01-2012<br>(603)<br><br>RE: APPEAL OF JUDGMENT ISSUED BY THE COURT OF APPEALS, JURIDICAL REGION OF SAN JUAN, IN THE CASE IN THE HEADING KLAN-2007-01242, REGARDING ARBITRATION, NULLITY OF CONTRACT, LAW AGAINST ORGANIZED CRIME, DAMAGES |

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IN THE SUPREME COURT OF PUERTO RICO

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**IN THE SUPREME COURT OF PUERTO RICO**

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## APPEAL

TO THE HONORABLE SUPREME COURT:

Appearing in court the co-defendants-appellants Entec Corporation, Consulta Económica y Planificación, Inc., Tommy Habibe Arias, Tommy Habibe Vargas, his wife Mrs. De Habibe Vargas, Habibe Enterprises, Inc., Active Consulting, Inc., Habibe Computer Corp., currently Venture Technologies Corp., Geotel, Inc., formerly Woolpert Puerto Rico, Inc., respectfully EXPOSE and REQUEST:

### I. JURISDICTION AND COMPETENCY

The jurisdiction ensues from Article V of the Constitution of the Commonwealth of Puerto Rico, Law No. 201 of August 22, 2003, as amended, Art. 3.002 (c); R. 53.1 (a) of Civil Procedure; and Rules 17 and 18 (b) from the Regulations of the Supreme Court of Puerto Rico. The competency ensues

whereas it originates from a Judgment pronounced by the Court of Appeals, Juridical Region of San Juan.

## II. DISCUSSION OVER THE JURISDICTIONAL BASIS

Article 3.002(c) of the Judicature Law confers jurisdiction and appellate competency when a conflict is between the Court of Appeals is stated in civil cases. According to what Rule 18 of the Regulations of the Supreme Court demands, 4 L.P.R.A. Ap. XXI, we proceed to summarize the Judgments of the Court of Appeals which are in controversy and we enclose copy of the Judgment in controversy.

The case you know about started with an arbitration procedure between the parties, as provided by the contracting clause. After more than a year has elapsed in arbitration, the Appellee--

Centro de Recaudaciones e Ingresos Municipales ("CRIM")-- sued before the FIC. Regardless to the advice that an arbitration clause existed, the FIC pronounced summarily null ab initio the contract between CRIM and the consortium composed by Entec Corp., Héctor Luis Rivas & Associates, Inc. and Consulta Económica y Planificación, Inc. The extinct CCA initially, and most recently the CA, confirmed that in spite of the contract referred all the controversies to arbitration with the *American Arbitration Association*. See Ap. 182-195 and 1660-1674. But this nullity of contract issue, that at the same time includes an arbitration clause, was not new to the CA.

The CA resolved in a completely opposed manner in *Velásquez Cruz v. Sears Roebuck*, KLAN 2005-01043, 2005 PR App. LEXIS 3721, res. November 23, 2005. There it confirmed a judgment

where the FIC referred the controversy regarding the validity of the contract to the agreed arbitration procedure. The CA decided in *Velásquez Cruz* that, "before the strong policy in our legal codes in favor of arbitration, as well as also is in the federal laws that impact the interstate commerce, we see no obstacle for the controversy before the FIC be initially submitted to.....[arbitration] procedure". *Velásquez Cruz v. Sears Roebuck*, supra , to page 19. In its conclusion, the CA expressed that "in its own time, it will fall upon the arbitrator, upon applying the pertinent laws to the controversy, to determine in first instance if the challenged contracts... are null...." *Velásquez Cruz*, supra, to page 19.

This Honorable Court has the jurisdiction to take care of the current motion in Appeals character in view of the Judgments that the Court of Appeals in the case you know about and in *Velásquez Cruz v.*

*Sears Roebuck*, supra, are inconsistent. It must be added that the decision of the CA in this case with the jurisdiction of the Commonwealth of Puerto Rico is headed to crash with the federal jurisdiction for what the United States Supreme Court pronounced in *Buckeye Check Cashing v. Cardegna*, 546 U.S. 440, 126 S. Ct. 1204 (2006) and *Prima Paint v. Flood & Conklin Mfg.*, 388 U.S. 395; 18 L. Ed. 2nd, 1270 (1967). There it was established that controversies such as the ones in the case you know are sent to the arbitrator for all purposes, in view of the *Federal Arbitration Act* ("FAA"). 9 U.S.C.A. §§ 1, *et. seq.*

In the alternative, Rule 30 of the Rules of the Supreme Court, 4 L.P.R.A. Ap. XXI, this Honorable Court establishes, that in exercising its discretion, it will consider determined criteria to issue the court proceedings. Among this criteria are: (a) if the remedy and the disposition of the judgment or

recurred resolution, unlike its basis, are contrary to law, taking this into its most broad meaning, (b) if the item stated is new, (c) even if it is not new, if the expression of the rule, is important to the public interest, if the concession of the court proceedings contributes in another manner to the operations of this Court of vindicating the law and set the laws for the country and (e) if the phase in which the case is presented is the most adequate for its consideration, among others.

The facts situation and controversy of law that the lawsuit on the heading of this case presents, satisfies the requirements of the previously outlined criteria. The controversy in the case in the court proceedings turns around the issue if it belongs to the court or to the arbitrator to decide if a contract which has an arbitration clause is valid. On the

other hand, if summary judgment proceeds when the lawsuit is not "mature" for adjudication.

It is well known that there exists a strong public policy in favor of arbitration. See *Paine Webber v. Soc. de Gananciales*, 151 D.P.R. 307 (2000); *McGregor-Doniger v. Tribunal Superior*, 98 D.P.R. 864 (1970). A ruling that denies the request to enforce an arbitration clause has the inherent effect of debilitating said public policy and therefore it is contrary to the law and to the legal state. Therefore, the issue involved in the case in the title is of primary importance to the public interest. Also, it likely applies to the previous indication regarding the intolerable conflict to which the decision of the CA is headed to (and FIC) with the Supreme Court of the United States of America. See *Buckeye and Prima Paint*, previously. It proceeds for this Honorable Court to correct the instance error of the

CA to conform it to the prevalent doctrine of arbitration.

On the other hand, it is a deep-rooted doctrine in this jurisdiction, that "those cases in which it is important to determine the mental state should not be resolved through summary procedure". *Jusino Figueroa v. Walgreens of San Patricio*, 155 D.P.R. 560 (2001); *Cuadrado Lugo v. Santiago Rodríguez*, 126 D.P.R. 272, 283 (1990). Neither those which present subjective intention elements, negligent or mental, where the credibility element plays an essential part, if not the decisive, to arrive at the truth, and where a litigant depends to a great measure on which the contrary will extract in the course of a live trial. In those cases it is with difficulty that the Court has before itself all the truth of the facts through affidavits or depositions. *Audiovisual Lang v. Sist. Est. Natal Hnos.*, 144

D.P.R. 563 (1997); *Soto v. Hotel Caribe Hilton*, 137 D.P.R. 294, 301 (1994); *García López v. Méndez García*, 88 D.P.R. 363, 380 1963).

In the same well known case is about the nullity *ab initio* of a contract by fraud. There is no evidence in the file of any fraudulent act before the date of the contract (v.g., July 20, 1995). The acts object of federal indictments are all very subsequent to the date of the contract between the parties. There is no objective subsequent fact that is tied to the public servants scheme of deriving benefits for themselves through the extortion very subsequent to the date of the contract. That is why it is imperative to then evaluate the mental process of those implied, to determine if in effect, an intention existed to commit fraud previous to the contracting that adulterates the birth of the contractual obligation. According to the doctrine, this type of case cannot be

resolved through summary judgment, when instead it should take place through plenary trial. *Jusino*, supra; *Audiovisual Lang*, supra.

Also, the FIC resolved through summary judgment avoiding the following: (i) the discovery of evidence had not concluded yet; (ii) there is evidence in the court proceedings that generate fact controversies in material issues; (iii) this Honorable Court has resolved that the documents in which the FIC based its determination are not conclusive evidence of the facts; (iv) it lifted the corporate veil summarily, without evaluating the required elements for configuring said cause of action; and, (v) attributed temerity to those appearing in court in spite of basing its defenses in precedents that go to the core of the controversy in this old story and act counter to the ruling of the FIC.

## III. JUDGMENT FROM WHERE IT RESORTS FROM

This Resource is requested against the Judgment of the CA in the case *CRIM v. Entec Corp.*, et als., KLAN-2007-01242, Juridical Region of San Juan, pronounced on April 29, 2008 and filed on May 2, 2008. Ap. P. 1658. The appearing in court filed Request for Reconsideration on May 19, 2008: (1) based on the lack of jurisdiction over the issue of the FIC and of the CA in so far as it prohibits an arbitration clause, and; (2) controverts the determination of the FIC, confirmed by the CA, that the motion of determination of facts and additional legal conclusions that was filed by the appearing in court did not interrupt the jurisdictional term.

On May 30, 2008, the CA responded with a bare Overruling. This was filed on June 5, 2008.

## IV. RELEVANT FACTS

1. On July 20, 1995, the contract was signed between Centro de Recaudación de Ingresos Municipales ('CRIM') and a consortium composed by Entec Corporation ('ENTEC'), Consulta Económica y Planificación, Inc. ('CEPI') and Héctor Luis Rivas y Asociados, Inc. ('HLR') (hereinafter jointly known as the 'Consortium'), for the development, installation and implementation of a digitalized land registry system, known as "Land Information Management System" ('LIMS').

2. The price for the work performed, meaning, equipment, materials and services, was fixed in $56,042,352.00; amount to be paid by phases of the project. *See* Section 19.1 of the LIMS Contract, Ap. 98-124.

3. The parties agreed to use alternate methods to resolve disputes through arbitration before the American Arbitration Association ("AAA"). *See* Section 22 of the LIMS Contract, pages 19-20, Ap. 98-124.

4. To those effects, the arbitration clause disposes:

**"Any difference or disputes arising out of or in connection with the execution of this Agreement shall be settled by an amicable effort on the part of all parties.**

22.2 JUDGMENT

**All disputes, controversies and questions that may arise under this Agreement that cannot be solved satisfactorily between the Contractor and CRIM shall be resolved any [sic] arbitration conducted in Puerto Rico in accordance with the Rules of the American Arbitration Association, by an arbitrator appointed by the Association. The arbitrator shall be governed by, and apply the substantive law of Puerto Rico and the findings shall be final and binding upon the Contractor and CRIM and shall be a condition precedent to any right of legal**

**action. Judgment on such award may be entered in any court having jurisdiction thereof. The parties shall share the cost of arbitration."**

5. On September 20, 2000, the Consortium filed an arbitration petition ("Demand for Arbitration") before the AAA due to noncompliance of the CRIM of its obligations under the contract, including $2,241,685.78 for services provided in accordance to the LIMS contract; $1,626,186.16 for maintenance services, and $6,699,578.00 for accepted change orders; $5,000,000.00 in damages, including loss of profits and business opportunities, libel and others. Ap. 1386-1387.

6. On December 11, 2000, CRIM answered ("Statement of Defense") without challenging the arbitration court. Ap. 1390-1393.

7. CRIM raised reservations in so far as the jurisdiction of the AAA ten (10) months after having filed the Arbitration Petition, and six (6) months after cross-claiming for damages for breach of contract the amount of twenty (20) million dollars. Ap.1400-1417.

8. In its Notice to Appear in Court and Request to Halt Arbitration of May 21, 2001, CRIM argued that the CRIMs' "new administration" and its legal representation were evaluating the possibility that the LIMS contract suffered from fraud, referring to investigations made by the Office of the Federal Prosecutor of Puerto Rico.

9. After a meeting prior to trial of June 8, 2000, the AAA denied to halt arbitration and arranged a schedule for pending work. Ap. 1396-1399.

10. On July 13, 2001, CRIM presented an Amended Response to Demand for Arbitration, alleging that the LIMS Contract should be annulled because of fraud. Ap. 1400-1429. It argued that on August 8, 2000, indictments were filed at the Federal District Court for the District of Puerto Rico, against several public servants of CRIM and executives of the Consortium, as a result of alleged extortion acts by employees of CRIM in relation to the LIMS Contract.[1]

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[1] During the month of August, 2000, some prior public servants and employees of the Consortium were indicted before the federal court for the crime of extortion within the frame of interstate commerce, as a result of certain undue payments requested by public servants of CRIM to employees of the Consortium as a condition to approve invoiced payments by the Consortium for work duly handed in under the LIMS contract. On August 8, 2000, date upon which the indictments were produced in the Federal Court, the Federal Prosecutor Guillermo Gil mentioned in press conference the following:

> "The herewith charges are extortion charges. This means, that the public servants, requested payment from the contractors. It does not happen the other

11. In spite of denying the AAA jurisdiction, CRIM continued to actively participate in the arbitration, reaffirmed its claim of breach of contract, its statement of undue payments and increased the claimed amount to $100,000,000.00 in damages. On August 1, 2001 CRIM notified the Consortium a Supplementary Questioning, Admissions Request and Submittance of Documents. Ap. 1430-1464.

12. Afterwards, on September 26, 2001 CRIM filed a lawsuit alleging that the LIMS contract was null because of fraud. Ap. 1-29. Sued, among others, the members of the Consortium and their officers.

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way around, that the contractors go to the public servants. It is the public servants – 'if you want me to pay you, you have to pay me'. (Our emphasis.)

13. On September 27, 2001, CRIM filed an Urgent Motion Requesting Preliminary Injunction and Memorandum in Support of the Request for Preliminary Injunction to stop the arbitration procedure while the merits of the lawsuit were resolved. Ap. 30-52.

14. On June 27, 2002, the FIC order the suspension of the procedures before the AAA and the "arbitration was brought". Ap. 125-152.

15. On July 29, 2002, the petitioners requested the reversal of the Resolution of June 27, 2002 before the Appeals Circuit Court ('ACC'). Ap. 153-181.

16. On October 31, 2002, the ACC confirmed the recurred resolution declaring:

> "The plaintiff (CRIM) attempts to establish, in essence, that there was

no arbitration agreement in the case at the court proceedings, since the contract that includes said clause is null ab initio, for lacking a legal cause, for being a product of a fraud scheme against the State on behalf of several public servants which represented it in said administrative contracting in their character of official public servants and several suppliers that performed a service to the same". (our parenthesis) CRIM v. Entec, KLCE 200793, 2002 WL 32131029. Ap. 182-195.

17. The CCA concluded that the case would continue before the FIC (and not the arbitration panel) stating: "we conclude, applying the legal dispositions and

jurisprudence (...) that it is the legal court to whom corresponds the resolution of the controversy in reference to the validity of the contract under discussion". Ap. 182-195.

18. The appellants responded to the lawsuit on December 15, 2004 and raised the affirmative defense on the grounds of the arbitration clause. Ap. p. 248-271.

19. Without having concluded the discovery of evidence, on June 30, 2005 CRIM filed a Summary Judgment Motion. Ap. 416-1082.

20. As part of the discovery of evidence in the FIC, the deposition of the co-defendant Bernardo Negrón Montalvo was set to take place on August 23, 2005. Mr. Negrón did not appear because he was in prison and needed a special subpoena under Rules 40.3, 40.8 and 4.4 (d) of Civil Procedure.

21. The legal representation of CRIM brought to a stop the nonappearance minute to call the FIC and inform that Mr. Negrón had not appeared for the deposition, emphasizing that the same was important for the case.

22. With the participation of the FIC and of the present attorneys, the deposition of Mr. Negrón was postponed until November 21, 2005.

23. As agreed to, the deposition of Mr. Negrón was held on November 21, 2005 in the office of the legal representation of CRIM. The contents of said deposition is adverse to the theory of the CRIM's case and is evidence of genuine facts controversies that exist in the case.

24. Even when the discovery of evidence had not concluded, on December 7, 2005 the FIC pronounced a long Summary Judgment

resolving that the LIMS contract was null ab initio, and hence, the arbitration clause included in the same. Said summary judgment was filed in the court proceedings on December 13, 2005. Ap. 1085-1130.

25. On the date that the FIC pronounced Summary Judgment, CRIM had not notified the transcription of the incident where the FIC had postponed the deposition of Mr. Bernardo Negrón, and neither the transcription of said deposition.

26. On December 23, 2005, motion under Rule 43.3 of Civil Procedure, 32 L.P.R.A. Ap. III, R. 43.3, Ap. 1156-1157 was filed on good timing.

27. On January 13, 2006, a Reconsideration Request was filed, based on, inter alia, the Judgment was pronounced summarily without

the discovery of evidence period having concluded. Ap. 1163-1198.

28. This being the case, on February 21, 2006 the Supreme Court of the United States of America issued the opinion of *Buckeye*, ante, and determined that it is the arbitrator to whom corresponds to resolve the questioning of the validity or nullity of a contract with an arbitration clause. Ap. 1269-1302.

29. With this pronouncement of the Federal Supreme Court, on May 30, 2006 those appearing in court filed a Motion to Dismiss for Lack of Jurisdiction, since the legal state orders that it is the arbitrator the one to resolve, not the FIC. Ap. 1269-1302.

30. On February 26, 2007, the matter was reminded to the FIC. Ap. p. 1326-1329.

Likewise, it was alerted over a case of the CA, *Velázquez Cruz*, ante, which resolved

that it is the arbitrator, not the court, who has to determine at first instance if the contract in controversy is valid or null.

31. The FIC pronounced Resolution on June 26, 2007, filed on July 24, 2007, where it sticked to it previous expressions overruling the motions under Rules 43.3 and 47, and to dismiss for lack of jurisdiction. Ap. 1337-1374.

32. On August 23, 2007, those appearing in court appealed to the CA pointing out five (5) errors made by the FIC. Ap. p. 1484-1524.

33. CRIM answered on October 15, 2007. Ap. p. 1534-1571.

34. On November 13, 2007, those appearing in court filed a Motion in Aid of Jurisdiction requesting that it be determined, as a

threshold matter, the jurisdictional issue of the arbitration clause in the LIMS Contract. Ap. 1640-1646.

35. On April 29, 2008, the CA pronounced Judgment confirming the FIC pronouncing itself without jurisdiction due to the alleged insufficiency of the motion under R. 43.3 of Civil Procedure. Ap. 1658-1674. The CA did not step into the merits of the lack of jurisdiction issue over the subject for the arbitration clause reason.

36. On May 19, 2008, those appearing in court requested reconsideration based on:

(1) the issue of lack of jurisdiction due to insufficiency under the motion of Rule 43.3 of Civil Procedure is immaterial to the effects of the statement of lack of jurisdiction over the matter and the arbitration clause, and (2) that

the motion under R. 43.3 did meet the requirements of *Andino v. Topeka*, 142 D.P.R. 933 (1997). Ap. p. 1675-1684.

37. On May 30, 2008, the CA overruled the reconsideration request. It was notified on June 5, 2008. Ap. 1685-1687.

## V. INDICATION OF ERROR

**a. The CA fell into error upon not going into the merits and adjudicate the argument for lack of jurisdiction over the issue of the arbitration clause.**

**b. The FIC fell into error upon determining that in effect the request under Rule 43.3 of Civil**

**Procedure was insufficient to interrupt the jurisdictional term to appeal.**

## VI. DISCUSSION OF THE INDICATIONS OF ERROR

### a. The CA fell into error upon not going into the merits and adjudicate the argument for lack of jurisdiction over the issue of the arbitration clause.

The issue of the applicability of the FAA, *Buckeye and Prima Paint* to the well known suit is an argument of lack of jurisdiction over the issue. Our code of laws disposes that an "argument over

lack of jurisdiction over the issue can be done at any time during the procedure by any of the parties or by the court *motu propio*". *Vázquez v. A.R.P.E.*, 128 D.P.R. 513, 537 (1991) (underlined by us). The appellants raised the defense of lack of jurisdiction and application of the FAA in the Answer to the Second Amended Lawsuit. *See* Affirmative Defenses 1 to 9, Ap. p. 268. Likewise before the CA. See Ap. 182-195. Most recently, the appellants reaffirmed the defense of lack of jurisdiction and applicability of the FAA through the dismissal motion of May 30, 2006, when the litigation continued before the FIC. The FIC evaluated then three issues filed by those appearing in court: (1) the request under R. 43.3; (2) the reconsideration request, and (3) the dismissal motion for lack of jurisdiction according to *Buckeye*.

In its Resolution of June 26, 2007, Ap. 1338-1374, the FIC pronounced (1) overruled the request

under R. 43.3 for not complying with the requirements of *Andino*; (2) overruled for being academic the reconsideration request, and, (3) overruled the dismissal motion for lack of jurisdiction according to *Buckeye* because it was contrary to the law of the case. Ap. 1374. Of the determining part of this Resolution comes forward that the argument of lack of jurisdiction over the issue "escapes" any ineffectiveness that can be attributed to the request of R. 43.3. The FIC could not dismiss as academic the dismissal motion according to *Buckeye* since it is a jurisdictional argument, therefore its designation is always well-timed. *Vázquez*, 128 D.P.R., to page 537. Said argument has nothing to do with the efficacy or inefficacy of the request under R. 43.3.

The Appeals resource before the CA argued the lack of jurisdiction over the issue for the reason of the arbitration clause in the contract. Ap. p. 1484-

1524. The jurisdiction over the matter is a legal point that was resolved independently in the Resolution of June 26, 2007 and was brought to the CA within the jurisdictional term. The fact that the FIC had decided to resolve the three motions in one single document does not have the effect of preventing juridical consequences independent of the jurisdictional questioning. *Vázquez*, 128 D.P.R., to page 537.

Procedurally, the controversy of the request before the FIC under R. 43.3 met the specificity requirements of *Andino* is immaterial and independent to the discussion of the issue of lack of jurisdiction over the matter and the applicability of the FAA. The FIC pronounced the Resolution resolving the dismissal motion for lack of jurisdiction over the matter on the same June 26, 2007 and notified it on July 24, 2007. The well known case

resource was filed on August 23, 2007 within the jurisdictional term of thirty (30) days. That is why, without being important if the request under 43.3 fullfills with *Andino*, the particular issue of lack of jurisdiction over the matter, under the FAA, *Buckeye and Prima Paint*, was filed on time. Therefore, the CA erred upon not going into the merits of the argument of lack of jurisdiction based on the FAA, *Buckeye and Prima Paint*.

The argument of lack of jurisdiction over the matter is based on the Supremacy Clause of the Federal Constitution. Art. VI, C1.2 of the United States of America Constitution, 1 L.P.R.A., page 177. By constitutional order, the state courts pledge allegiance to the Federal High Court in issues that are the concern of federal legislation such as the FAA. See *Ramos v. Medina*, 121 D.P.R. 312 (1988). *Buckeye* is (i) an opinion of the Federal Supreme

Court that goes to the core of the controversy in the well known case, and , (ii) is irreconcilable with the decisions of the CA of October 31, 2002 and of April 29, 2008, and of the FIC of June 26, 2007. If *Prima Paint*, was not enough to persuade the FIC and the CA over the lack of jurisdiction, certainly *Buckeye* clears any possible misunderstanding and moved the controversy to arbitration. See the discussion that developed in "Reiterated Motion to Dismiss for Lack of Jurisdiction", and its enclosures. Ap. pages 1269-1302.

Nevertheless, to evade *Buckeye*, the FIC collected the proposal of CRIM: the doctrine of the "law of the case". This position of the FIC presents significant problems, namely: (1) the law of the case if a relatively weak doctrine in our code of laws[2],

[2] The appeals court is calling to apply a different legal rule, if it understands that the law of the case previously established is erroneous and could cause a serious injustice. *Pueblo v. Lebron*,

*M.A.S.C. v. E.L.A.*, 152 D.P.R. 599, 608 (2000); and, (2) the authors of treatises indicate that the doctrine of the law of the case yields before jurisprudence such as *Buckeye*. See *Wright, et al.*, Federal Practice and Procedure Jurisdiction 2d. §4478, pages 672-676; Moore's Federal Practice 3d, § 134.21 [3] [b].[3] But above all, presents a problem of juridical analysis since there cannot be jurisdiction where there is none. *Gobernador de P.R. v. Alcalde de Juncos*, 121 D.P.R. 522, 530 (1988); *Rodríguez v. Registrador*, 75 D.P.R. 712, 716 (1953). The inexorable premise of

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*Lebron* 121 D.P.R. 154, 159 (1988). After all, the doctrine is one at the service of justice, not of injustice. *Noriega Rodriguez v. Hernández Colon*, 130 D.P.R. 919, 931 (1992). In Puerto Rico there is no reason at all for which the doctrine of the "law of the case" should be applied with precise strictness, nor as obstacle to the power of the courts to rectify the determinations that at some point disposed in an erroneous way of a controversy. *Torres Cruz v. Municipio de San Juan*, 103 D.P.R. 217, 222 (1975).

[3] When in the interim between the first and the second decisions of the lower court, a higher court to which the court owes obedience issues an opinion directly on point and irreconcilable with the earlier decision, the court is to disregard the law of the case and is to apply the new precedent." (underlined by us) Moore's Federal Practice 3d, §134.21 [3] [b].

the doctrine of the law of the case is that a case exists. If there is no jurisdiction, there is no case to apply the referred doctrine.

After *Prima Paint and Buckeye*, there is no doubt that the courts lack jurisdiction over the matter to resolve the nullity *ab initio* of a contract that at the same time has an arbitration clause. *Buckeye* cleared up any assault of a doubt and confirmed the supreme law of the nation –the FAA— that the arbitrator is the one whom should decide if a contract with an arbitration clause is valid or null, not the courts. See copy of the Opinion of *Buckeye*, Ap. page 1273-1276.

It is an indisputable fact that the extinct TCA concluded that what is in controversy in this case is the challenging of the contract between the parties (.v.g., the nullity *ab initio*) and that arbitration clause would have the same fortune as the contract

that includes it. See page 7 in *CRIM v. Entec*, 2002 WL 32131029 (TCA), Ap. p. 182-195. The impugnation is not specifically to the arbitration clause when instead it steps from the premise that the document, in its' entirety, is not a valid contract. But upon interpreting the *FAA*, in *Buckeye* the Federal Supreme Court reaffirmed *Prima Paint*, *supra*, pronouncing: "**We reaffirm today that, regardless of whether the challenge is brought in federal or state court, a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator.**" *Buckeye*, to page 1210. The pronouncement of the Federal Supreme Court, first in *Prima Paint* and then in *Buckeye*, is the only possible law of the case. It is necessary to conclude that the well known case should have continued

before the arbitration panel and that it was erroneously channeled through our court system.[4]

In conclusion, after the refrained study of the FAA[5] and the unequivocal pronouncement of *Prima Paint* and *Buckeye*, this Honorable Court will find that it proceeds to revoke the judgments of the CA

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[4] *Buckeye* was resolved on February 21, 2006.

[5] It is arrived to the same result under the Commercial Arbitration Law, No. 376 of May 8, 1951, 32 L.P.R.A. §§ 3201 et seq. The local statute is a creation of the North American laws. *Municipio de Mayaguez v. Lebrón*, 2006 T.S.P.R. 70, res. on April 21, 2006. This Honorable Court turns to the North American jurisprudence to interpret the lagoons in the local arbitration law. *Id.* The Commercial Arbitration Law does not take into consideration the specific situation of the validity of the contract in its entirety, contrary to the validity solely of the arbitration clause, which is why it does not include a specific disposition that pays attention to the controversy in the court proceedings. Nevertheless this Court has expressed that in our jurisdiction exists a strong policy in favor of arbitration and any doubt with respect to the existence or not of said procedure must be resolved on its behalf. See *Corp. P.R. Dif. Pub. v. U.G.T.*, 156 D.P.R. 631 (2002); *UCPR v. Triangle Engineering Corp.*, 136 D.P.R. (1994). Also, the *FAA* occupies the domain and displaces any state legislation contrary to the public policy that said clause implements. *Southland Corp. v. Keating*, 465 U.S. 1, 10-13 (1984). No local clause can be more restrictive to the national public policy that (just as ours) favors the arbitration of controversies. *Id.* An interpretation on behalf of this Court under the local law that would inconsistent with *Prima Paint and Buckeye* would result in an unsurmountable conflict with the Supremacy Clause. *Id.*

and the FIC and return this case to the constituted arbitration panel that had been understanding the controversy upon September 20, 2000. See parr. 81 of the Second Amended Lawsuit, Ap. p. 213.

**b. The FIC fell into error upon determining that in effect the request under Rule 43.3 of Civil Procedure was insufficient to interrupt the jurisdictional term to appeal.**

Rule 43.3 of Civil Procedure, controls what is related to facts determinations and additional legal conclusions. 32 L.P.R.A. Ap. III. R. 43.3. With the request of R. 43.3, the FIC maintains the jurisdiction while not expressing itself, and the parties are disabled from resorting to the aid of the CA, even when thirty (30) days have passed upon the judgment being notified. See *Padró v. Epifanio*

*Vidal, S.E.*, 153 D.P.R. 357, 366-367 (2001); *Szendrey v. F. Castillo Family Properties, Inc.*, 2007 T.S.P.R. 6; *Ramos v. Westernbank*, 2007 T.S.P.R. 122.

If months after, the FIC wants to determine that the request of R. 43.3 did not meet the requests of *Andino* over the "particularity" and "specificity", it is understood that the request under R. 43.3 never interrupted the term to file an appeal. Then, the CA confronts a threshold determination over the perfectionism of the filed resource within the thirty (30) days after the notice of the resolution resolving the ill-fated request of R. 43.3, v.g., if it is outside the jurisdictional term or not. It could be said that this legal state leaves the FIC with some control over the appeals practice. Certainly, further on than what the legislator meant upon approving the rules project, that prevail today. The concern is taken care of, nevertheless, requiring the courts conservatism

upon evaluating if a request of R. 43.3 meets or not the requests of *Andino*.

The Supreme Court established in *Andino*, to pages 939-940, that only motions for facts determinations and additional legal conclusions, with sufficient "particularity and specificity", will be valid; and will have an interrupting effect of the term to resort to an appeal. The request of R. 43.3 in *Andino* expressed:

> "2. ...through the current and according with Rule 43.3 of Civil Procedure, this complainant party requests this Honorable Court, to make determination of facts and legal with respect to what ensues from the deposition that remains in the court proceedings.

3. With the greatest respect and by virtue of Rule 47 of the Rules of Transitory Civil Procedures, in force upon January 24, 1995, we request the reconsideration of the referred determination by the following reasons.

4. In first instance we should make clear that the present cause of action is not about an ordinary lawsuit but of a complaint of dismissal without grounds, retaliations and discrimination sheltered by summary procedure established in Law No. 2 of October 17, 1961.

5. Finally, we request from this Honorable Court the reconsideration

due to the reason that Law 115, under which the present cause of action was filed, included the intention to offer testimony. When the law is clear its wording will be observed. See Article 14 of the Civil Code. Also, since it deals with a labour legislation of a remedial character we should interpret the same liberally and not restrictively."

*Andino*, to pages 935-936.

It is evident, that in *Andino*, the "motion requesting facts determination and additional legal (...)", did not propose determination nor any additional conclusions. This Honorable Court expressed itself in *Andino* that:

"The forensic practice demands, that any motion over additional facts determination or of amendment, constitute a proposal which should expose, with sufficient particularity and specificity, the facts the promoter deems proven and, based in substantial issues related with pertinent facts determinations or material legal conclusions together with the pertinence for which the same are requested". *Andino*, to pages 939-940.

The ill-called request of R. 43.3 in *Andino*, did not particularize anything, but instead in a vague and general manner, asked for a reconsideration based on what was arising from the deposition of the applicant. Said request failed in placing the court in a position of knowing

with particularity and specificity the interested additional determinations and which emanated from the deposition and its pertinency to the ends of an appropriate judgment revision. *Andino*, to page 940. But *Andino* is very different from this well known case.

In this well known case, the request of R.43.3 required the FIC to add the following facts to its summary judgment:

> a. That upon the FIC determining that the deposition of the co-defendant Bernardo Negrón would be taken on November 21, 2005, it was a demonstration that said court was aware that the discovery of evidence had not concluded;

b. That the contents of the deposition taken to Mr. Negrón on November 21, 2005 is adverse to CRIM and contrary to the summary judgment pronounced on December 7, 2005;

c. That at the moment that the LIMS contract was awarded (July 20, 1995) the co-defendants Tommy Habibe Arias, nor Tommy Habibe Vargas had pleaded guilty to any crime;

d. That the other co-defending entities never were indicted nor convicted;

e. That all the "specific facts" to which the co-defendants Habibe pleaded guilty are very subsequent to the awarding of the LIMS contract;

f. That Mr. Eduardo Burgos offered at least two different versions to public servants of the government agencies before adopting the last version.

As legal conclusions, the following were requested: (a) that the First Circuit Court of Appeals has resolved that the Government Version of the Facts are only biased versions of one party, and; (b) that a guilty plea, although admissible in a subsequent lawsuit, is not a concluding evidence of the facts.[6]

Comparing the two previously transcribed motions, the considerable differences between both are evident. Contrary to the request of R. 43.3 of *Andino*, the filed by those appearing in court goes

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[6] In its Resolution of June 26, 2007 resolving the request under the R. 43.3, the FIC expressed that in *Toro Lugo v. Ortiz Martinez* , 105 D.P.R. 229 (1976), "the Supreme Court concluded that the facts proven in a penal cause, although they are not concluding at the point of excluding its re-litigation in a civil action..., constitute prima facie evidence of its existence, admissible in a civil lawsuit. The party to whom said evidence results adverse has the right to claim its insufficiency or to controvert it with another evidence and the judger will make its own assessment of the evidence that may or not be in accordance with the appreciation of the same in the criminal trial. (Underlined by us.) Ap. page 1355-1356. Nevertheless, upon pronouncing it premature Judgment (since the discovery of evidence was still under way), the FIC attested as true the "guilty pleas" of the federal litigation.

directly to the core of the controversy of the summary judgment herewith appealed: facts and legal arguments that defeat the application of the summary judgment mechanism.

It is obvious in *Andino*, the request of R. 43.3 did not specify what were the facts that the applicant understood had been proven in instance. In *Andino* the issue was left for the judger to do the job of the lawyer and arrive at fact determinations and additional legal conclusions, with respect to what ensues of the deposition that remains in the court proceedings. See transcription of request 43.3 in *Andino*, infra, page 12. This is diametrically opposed to the request of R. 43.3 in this well-known case. Here the appearing in court outlined a series of facts that directly spoils the notion of the FIC that there was no controversy of facts nor legal, and that the case was "mature" to be adjudicated through

summary judgment. Proposals "a", "c" and "d" of the appellants did not even require investigation of any document.

On the other hand, from the declaration of Mr. Negrón ensues that all the material facts are controverted and as opposed to what is alleged in the lawsuit (and that the CRIM repeats, as if the act of repeating would induce a state of lethargy that would make as true what is false), there never was fraud in the contracting. That the only fraud was the one that the witness of the CRIM- Eduardo Burgos Lebrón - perpetrated (perjury) whom demanded money in exchange for issuing payments under the LIMS contract, already in the phase of execution.

In cases where subjective elements of intention, mental purposes or negligence are presented, the discovery of evidence may not be enough. The court must be able to hear and see the

witnessing evidence reviewed in court in order to be able to pronounce judgment regarding credibility. This is the importance of a full judgment. This well known case is precisely one of those not susceptible to summary judgment, particularly in a phase in which the discovery of evidence had not concluded. *Audiovisual Lang*, supra. See the arguments exposed in the Reconsideration Request for Several Reasons. Ap. p. 1163-1170.

It is not enough for the FIC to charge all of the additional facts proposal as "general allegations that do not inform the court with sufficient particularity and specificity which are those proven facts that were not determined by the court in its judgment". Ap. page 1346. *Andino* requires the intellectual exercise of examining the contents of every proposal to determine if they lack

"particularity" and "specificity". See *Andino*. Neither did the FIC nor the CA made this exercise.

It is a fact, as well as a mandatory additional legal conclusion, that the guilty pleas in the federal courts, for facts that have occurred much later to the signing of the LIMS contract, do not make said contract null *ab initio*. The truth is that all the specific acts for which the guilty pleas were issued occurred after July 20, 1995, date in which the LIMS contract was subscribed. The FIC should have considered that truth in the light of the rule of *Maysonet v. Granda*, 133 D.P.R. 676 (1993), that even when a guilty plea is admissible in a subsequent civil lawsuit, such allegation is not a concluding evidence of the facts. *Maysonet*, 133 D.P.R. to page 679.

Contrary to what the CRIM alleges, the fact is that it was much later to the awarding of the LIMS

contract, that the first approach and request from the public servants of the CRIM (v.g., Burgos Lebrón) ensued to extortion Habibe and obtain money in exchange to authorize the payment of the owed amounts, and required, under the contract. Previous to granting the LIMS contract, there were no payments, promises of payments or requests of money to obtain said contract. Ap. page 1163-1198, Sworn Statement of Tommy Habibe Vargas. The Sworn Statement of Mr. Habibe Vargas and the expressions of Prosecutor Gil regarding the inexistence of illicit payments previous to the awarding of the contract are consistent. See Statement of the Prosecutor Gil, transcribed in footnote 1, *infra*. The description that the Prosecutor states confirms that, if something illegal happened, it was subsequent to the awarding of the contract when principals of ENTEC were extortioned in exchange

for authorization to pay illegal invoices. Therefore, the LIMS contract is not null *ab initio.*

If it is determined that in effect extortion occurred, the same was in relation to the execution of the proper consideration of the CRIM under the contract. That would not annul the LIMS contract. For the same reason, the FIC cannot nor should not declare the contract null *ab initio*, nor invalidate the arbitration clause.

It is an issue of evidence if the version of CRIM, v.g., that Bernardo Negrón, Burgos Lebrón and Margarita Sanfeliz convinced the Governing Board of CRIM that the offer of the Consortium, not only was the best offer, but that it also was an offer in accordance to law. But in essence, the FIC, without hearing the evidence, concluded that professionals, with the likes of the deceased mayor Hon. Rafael Cordero (Ponce) and Hon. José Aponte

(Carolina), besides employees and/or consultants such as Mr. Rurico Pintado (former Director of Data Processing Center) and Architect Javier Bonín, did not perform their evaluation and supervision duties in an adequate manner, or else they were foolish, easily deceived, with poor discernment qualities.

In fact, it was the Hon. Rafael Cordero the one who filed the motion to authorize the Executive Director Eduardo Burgos to sign the contract for the LIMS project. The Hon. José Aponte supported the same, being this motion finally unanimously approved by the whole Governing Board. See Ap. 1375-1393, Act 95-7 of the Governing Board of CRIM of July 19, 1995. It is hard to believe that three persons were able to coax so many professionals with recognized experience and capabilities, without raising any suspicion of their future intentions. But in any event that would be an issue of evidence.

There is evidence in the court records of this case, that supports the theory of the appearing in court that the public servants of the CRIM (v.g., Eduardo Burgos Lebrón) extortioned the contractors; that the discovery of evidence was in process at the time of the summary judgment by the FIC; and that evidence exists that the star witness of the CRIM, Eduardo Burgos Lebrón, is not trustworthy. It is likewise mandatory the legal conclusion, that (i) the guilty pleas on which the summary judgment is based are not concluding evidence of the facts and (ii) the Government Version of the Facts is only a biased version of the federal prosecutors office.

The request of R. 43.3 filed by those appearing in court on December 23, 2005 is not similar at all to *Andino*. The same presents a proposal of additional facts and legal conclusions very biased and specific, which defeats the mechanism of summary judgment.

This Honorable Court should consider that if the co-defending appellants would have filed the resource before receiving the resolution over the request for R. 43.3, the CA probably would have overruled for being premature. *Padró*, 153 D.P.R., to pages 366-367; *Szendrey*, supra; *Ramos*, supra. Therefore, upon waiting for the FIC to resolve, and actually

Resolving that the request for R. 43.3 did not comply with *Andino*, the co-defending appellants have been deprived of any appeal resource because the jurisdictional term to appeal had passed. It should be considered that if the resource on the well known case was filed eight (8) months, after those first thirty (30) days of the Judgment by the FIC had elapsed, it was because the FIC took seven (7) months, to resolve the request for R. 43.3. The

previous would seem to bring a new focus on the "sporting theory" of the suit.

The Judgment of April 29, 2008, of the CA, creates a "perfection" request for any request of R. 43.3, which hinders the right to appeal. In *García v. Hormigonera Mayaguezana, Inc.*, 2007 T.S.P.R. 149, a very related frame of facts was filed. In that case, *Hormigonera* filed a timely request for R.43.3. The FIC rejected it alleging that the facts "were adjudicated in accordance with the evidence filed and the Judgment (...), because the additional determinations motion does not correct legal and fact declared errors as well". The FIC also stated that the intention behind filing said motion was to extend the jurisdictional term to file an appeal, with the fatal consequence of not interrupting the appeals term. The Supreme Court determined that "for the judgments that the courts issue, as well as for the

motions...(under Rule 43.3 of Civil Procedure)—it does not exist, nor can exist a requirement that imposes perfection". *García v. Hormigonera*, to page 8. (Our emphasis and explanation.)

If First Instance and then the CA understood, that the facts determination or additional legal conclusions proposed by the appearing in court did not proceed, that does not turn the request for R. 43.3 in null or inefficient. To "annul" or make "inefficient" a request for R. 43.3, the *Andino* intellectual exercise must be made. Because of this, the determination of inefficiency of the request for R. 43.3, must be used in exceptional circumstances and after the *Andino* exercise has been made. Without the intellectual exercise of *Andino*, we are at risk for latent hostility, prejudice and bias to deny a party their day in court. There is no space for that in a good legal system.

## VII. PLEA

WHEREFORE, it is requested from the Supreme Court to overrule the lawsuit so that the case returns to the arbitration panel according to the *FAA, Prima Paint and Buckeye.* In the alternative, that the same returns to the CA so that it will do the corresponding exercise: (i) under *FAA, Prima Paint and Buckeye*, and ; (ii) under *Topeka* regarding the jurisdictional issue in relation to the summary adjudication of this lawsuit.

In San Juan, Puerto Rico as of July 7, 2007.

I CERTIFY: That today I have sent through regular mail true and exact copy of the preceding document to Atty. Ignacio Gorrín Maldonado and to Atty. María del Carmen Taboas, Fiddler González & Rodríguez, P.S.C. PO Box 363507, San Juan, PR 00936-3507; Atty. Félix A. Colón Miró, 80 Rodulfo González, Adjuntas, Puerto Rico 00601; Atty. José A.

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